



Public

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

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

195 MONTAGUE STREET – FOURTH FLOOR
BROOKLYN, NEW YORK 11201

March 3, 2010



CPD - STD done 4/1/210

Perry A. Orens, Physician

Re: Application for Restoration

Dear Dr. Orens:

Enclosed please find the Commissioner's Order regarding Case No CP-09-23, which is in reference to the restoration of license number 082198. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

LOUIS J. CATONE, Director
Office of Professional Discipline
By:

ARIANA MILLER
Supervisor

DJK/AM/er

Enclosure

CERTIFIED MAIL – RRR

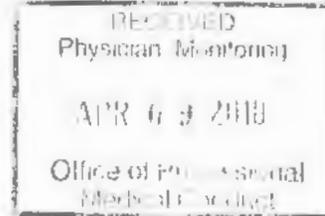
cc: Kyle N. Kordich

The
University of the
Education  State of New York
Department

IN THE MATTER

of the

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



Case No. CP-09-23

It appearing that the license of PERRY A. ORENS,

to practice as a physician in the State of New York, was revoked by the Administrative Review Board for Professional Medical Conduct effective on or about April 30, 2000, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with the recommendations of the Peer Committee and the Committee on the Professions, except having adopted the terms of probation recommended by the Committee on the Professions, now, pursuant to action taken by the Board of Regents on October 19, 2009, it is hereby

ORDERED that the petition for restoration of License No. 082198, authorizing PERRY A. ORENS to practice as a physician in the State of New York, is denied, but that the execution of the order of revocation of said license is stayed, and said PERRY A. ORENS is placed on probation for a period of five years under the specified terms and conditions, and upon successful completion of this probationary period, his license to practice as a physician in the State of New York shall be fully restored.



IN WITNESS WHEREOF, I, David M. Steiner, 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 day of February, 2010.

Commissioner of Education

Case No. CP-09-23

It appearing that the license of PERRY A. ORENS, , authorizing him to practice as a physician in the State of New York, was revoked by the Administrative Review Board for Professional Medical Conduct effective on or about April 30, 2000, 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 agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, except having adopted the terms of probation recommended by the Committee on the Professions, now, pursuant to action taken by the Board of Regents on October 19, 2009, it is hereby

VOTED that the petition for restoration of License No. 082198, authorizing PERRY A. ORENS to practice as a physician in the State of New York, is denied, but that the execution of the order of revocation of said license is stayed, and said PERRY A. ORENS is placed on probation for a period of five years under the specified terms and conditions of probation, and upon successful completion of this probationary period, his license to practice as a physician in the State of New York shall be fully restored.

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: **Perry A. Orens**

Attorney: Kyle N. Kordich, Esq.

Perry Orens, petitioned for restoration of his physician license. The chronology of major events is as follows:

- 03/23/59 Issued license No. 082198 to practice medicine in State of New York.
- 04/13/99 Charged by the Department of Health with 34 specifications of professional misconduct.
- 11/17/99 Determination and Order of the Board for Professional Medical Conduct (BPMC) found the applicant guilty of committing negligence on more than one occasion, gross negligence, fraudulent practice, failure to maintain accurate records, and excessive treatment and testing, and revoked his medical license.
- 04/11/00 Administrative Review Board (ARB), following appeal, amended the determination to sustain additional charges of practicing with incompetence on more than one occasion and gross incompetence, and otherwise sustained the determination and revocation.
- 06/21/01 Appellate Division, Third Department, after appeal, annulled determination, based on a technicality, and did not address other appellate issues.
- 11/14/02 New York Court of Appeals reversed the Appellate Division and remitted case to the Appellate Division for further review.
- 07/03/03 Appellate Division confirmed the ARB decision and the revocation.
- 09/23/03 New York Court of Appeals dismissed appeal.
- 10/28/05 Application for restoration of license to practice medicine.

- 10/29/07 Peer Committee Restoration Review.
- 02/04/09 Report and Recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 08/12/09 Committee on the Professions Restoration Review.
- 10/08/09 Report and Recommendation of Committee on the Professions.

Disciplinary History. (See attached disciplinary documents.) On or about April 13, 1999, the Bureau of Professional Medical Conduct served the applicant with a Statement of Charges alleging that he had committed professional misconduct as defined in New York Education Law §6530 for having practiced the profession with negligence on more than one occasion, with gross negligence, with incompetence on more than one occasion, and with gross incompetence. He was also charged with practicing the profession fraudulently, with ordering excessive tests and treatment, and with failing to maintain accurate records. The charges stemmed from the applicant's treatment of ten patients between the years 1993 and 1996, all of whom he had treated for Lyme disease. The BPMC hearing committee found the applicant guilty of most of the charges, but not the incompetence charges. The applicant was found to have diagnosed Lyme disease without conducting proper examinations or attempting to rule out other causes. He was also found to have ordered excessive and unwarranted tests, acts which the committee found to have been fraudulent and done for his own monetary enrichment. He was found by the committee to have placed his patients at risk by treating them inappropriately and by failing to adequately monitor them or to follow up on adverse reactions by some of them to medications. He also was found to have failed to properly record diagnostic or management plans. The committee revoked the applicant's license.

The applicant appealed the committee's determination to the ARB, which modified the findings of the hearing committee sustaining charges of incompetence on more than one occasion and of gross incompetence, but otherwise sustained the findings and revocation. The applicant filed an Article 78 proceeding, and the Appellate Division ordered a new hearing based on the composition of the hearing committee, indicating that the physician assistant who had served on the panel along with two physicians, was not a "lay person" as required by Public Health Law §230. The Health Department then appealed, and the New York Court of Appeals reversed, indicating that a lay person could be anyone who was not a physician, and remitted the case to the Appellate Division, which, upon further review, confirmed the ARB decision and the revocation of the applicant's license.

In 2005, Dr. Orens submitted the instant application for restoration of his New York physician license.

Recommendation of the Peer Committee. (See attached report of the Peer Committee.) The Peer Committee (Cordice, Kavalier, and Norris) convened on October 29, 2007. In its report dated February 4, 2009, the Committee voted unanimously to recommend that the revocation of Dr. Orens' license be stayed and that he be placed

on probation for a period of five years under specified terms and conditions, which include a requirement that he only practice medicine in a supervised setting in an Article 28 facility with quarterly performance reports being submitted to the Department of Health.

Recommendation of the Committee on the Professions. On August 12, 2009, the Committee on the Professions (COP) (Templeman, Bentley, Frey) met with Dr. Orens to consider his application for restoration. Kyle Kordich, his attorney, accompanied him. The Committee asked Dr. Orens to explain the events that had led up to the loss of his license. Dr. Orens stated that he had practiced medicine for 40 years in the Great Neck area and was on staff at North Shore Hospital. He stated that he had always had an excellent reputation and that he had never had any malpractice claims against him. Then in 2001, negligence and fraud charges were presented against him for his handling of Lyme disease cases. He told the COP that he had first become involved in treating Lyme disease when his own daughter had come down with the disease. He indicated that few doctors handled Lyme disease cases at that time, that he began treating his daughter with extensive amounts of antibiotics, and that after awhile her condition improved greatly. He reported to the Committee that he continued to treat other people with Lyme disease, although it was still a very small portion of his practice. Dr. Orens stated that there was a great deal of disagreement in the medical community at that time as to how to treat Lyme disease and that there continues to be a lot of confusion about how to treat it. Dr. Orens admitted to the Committee that in his over-zealousness to treat Lyme disease, he had over-treated some patients and that he also had not kept adequate medical treatment records. He stated that he wishes now that he had done proper clinical trials and had kept complete records on his patients so that there would have been studies to promote a better understanding of the disease. He apologized for his actions and stated that he has thought about what led to the loss of his license for the past nine years. He told the COP that the loss of his license had caused him to also lose his business and his patients and had caused him to lose face in the medical community. He indicated that, if his license is restored, he does not plan to return to private practice at his present age of 82. He stated that he simply wants to regain his dignity and would like to perform part-time volunteer work, possibly in a Veterans Administration hospital where he could also be supervised.

The Committee asked Dr. Orens if he felt that he was presently competent to practice medicine. Dr. Orens indicated that he felt that he is competent now because he had attended grand rounds at North Shore Hospital and has also kept himself up-to-date by reading medical journals such as the New England Journal of Medicine and the Annals of Internal Medicine, and by reviewing self-assessment books in internal medicine. He has also accompanied his son on rounds at Johns Hopkins Hospital in Baltimore where his son is Associate Director of Pulmonary Medicine and Critical Care. Dr. Orens pointed out that he himself was once Chief of Medicine at Kingsbridge Veterans Hospital and noted that Dr. Scherr had confirmed in a supporting affidavit that he had attended weekly grand rounds at North Shore Hospital.

When asked by the Committee how many patients he had treated for Lyme disease and what his treatment consisted of, Dr. Orens explained that he had treated hundreds of patients for Lyme disease. He stated that there was and still is no clear diagnostic test to indicate that a patient has Lyme disease. He had therefore ordered

numerous tests for his patients and was then accused of over-testing. He explained that although he had been accused of ordering excessive tests for his own financial gain because of an alleged interest he had in a health care facility, he had no real financial interest in the facility in question and he had promptly dropped any association with the facility. Dr. Orens also stated that there had been a disagreement among medical providers and insurance companies about antibiotic use in treating Lyme disease. Some physicians felt that one week of antibiotics was sufficient, but he felt that they were wrong. He told the Committee that insurance companies balked at the expense of administering intravenous antibiotics for a long period of time. He stated that he had treated many patients successfully for Lyme disease but regretted his poor recordkeeping and over-treatment in the case of some patients.

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 concurs for the most part with the findings and recommendations of the Peer Committee. We believe that Dr. Orens has presented a compelling case that he understands the nature and causes of his misconduct and that he is remorseful concerning the actions that led to the revocation of his license. We believe that he has also worked steadily to re-educate and rehabilitate himself for restoration purposes by attending grand rounds and by reading medical journals. We note that, although the treatment of Lyme Disease was only a small part of Dr. Orens' primary care practice, he was found to have committed misconduct only in Lyme Disease cases, and that the appropriate treatment for Lyme Disease was at the time, and possibly still is, a controversial issue. Dr. Orens appeared to us to have a true passion for his career and a desire to provide the best possible medical care in the future. In this regard, we note that he expressed an interest in providing medical services in a Veterans Administration facility.

We were also impressed by the many letters and affidavits presented in support of Dr. Oren's application by physicians who had worked with him in the past and from patients who had been treated successfully by him. In addition, we note that Dr. Orens practiced as a physician for 40 years prior to the actions that led to the loss of his license without any malpractice claims. The COP is satisfied that it is highly unlikely that the misconduct involved in this case will reoccur. However, we believe, as did the Peer

Committee, that, given the length of time that Dr. Orens has not been actively engaged in the practice of medicine, a period of supervised probation is required to assure that the public will be adequately protected. Unlike the Peer Committee, however, we do not believe that Dr. Orens should be limited to serving his probationary period in a Public Health Law Article 28 facility, as such a restriction would unnecessarily limit the types of facilities in which he could serve with adequate supervision. Accordingly, we recommend that the terms of probation recommended by the Peer Committee be modified to permit Dr. Orens to serve his probationary period under supervision in a group practice previously approved by the Director of the Office of Professional Medical Conduct (OPMC). Additionally, in order to enable the OPMC to adequately supervise Dr. Orens' probationary period, the attached probationary terms also include a provision requiring that his probationary term be tolled for any period of time during which he is not engaged in the active practice of medicine in New York.

Based on all of the foregoing, a complete review of the record, and its meeting with him, the Committee on the Professions votes unanimously to recommend that the order of the Commissioner of Health revoking Dr. Orens' physician license be stayed, that he be placed on probation for a period of five years in accordance with the Terms of Probation of the Committee on the Professions set forth in Exhibit "A" annexed hereto, and that, upon satisfactory completion of the probationary period, his license be fully restored.

Leslie Templeman, Chair
Joseph Frey
Robert Bentley

EXHIBIT "A"

**TERMS OF PROBATION
OF THE COMMITTEE ON THE PROFESSIONS**

PERRY ORENS

1. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
2. That applicant shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, of any employment and/or practice, applicant's residence, telephone number, and mailing address, and of any change in applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;
3. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), NYSED, that applicant has paid all registration fees due and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by applicant to the NYSED, addressed to the Director, Office of Professional Discipline, as aforesaid, no later than the first three months of the period of probation;
4. That applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof that applicant has advised DPLS, NYSED, that applicant is not engaging in the practice of applicant's profession in the State of New York and does not desire to register, and that 2) applicant has paid any fines which may have previously been imposed upon applicant by the Board of Regents or pursuant to section 230-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;
5. That applicant shall practice medicine only in an Article 28 facility as defined by the Public Health Law of the State of New York or in a group setting previously approved by the Director, OPMC;
6. That applicant shall only practice as a physician in a supervised setting, under the supervision of a board certified physician in the type of medicine that the applicant is practicing, said supervising physician to be selected by applicant and previously approved, in writing, by the Director of the Office of Professional Medical Conduct;
7. That applicant shall have quarterly practice supervision reports by said supervising physician submitted to the New York State Department of Health (DOH), addressed to the Director, Office of Professional Medical Conduct, which evaluate the quality of applicant's performance in his place of employment and attest to his fitness to practice;

8. That applicant shall complete 30 hours of continuing medical education courses per year in the area of internal medicine;
9. That applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by said employee, for the purpose of said employee monitoring applicant's terms of probation to assure compliance therewith, and applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;
10. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding.
11. That the period of probation shall be tolled during periods in which the applicant is not engaged in the active practice of medicine in New York State. The applicant shall notify the Director of OPMC, in writing, if the applicant is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. The applicant shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the applicant's return to practice in New York State.



The University of the State of New York

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

_____X
In the Matter of the Application of

Perry Orens, M.D.

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 22991

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

Perry Orens, hereinafter also known as the applicant, was previously licensed to practice as a physician in the State of New York by the New York State Board of Regents. The applicant's license was revoked by the Office of Professional Medical Conduct (OPMC), New York State Health Department, following a professional misconduct proceeding, and he has applied for restoration of his license.

Chronology of Events

03/23/59 Issued license no. 082198 to practice medicine in the State of New York.

- 04/13/99 Charged with 34 specifications of professional misconduct by Department of Health for having violated various sections of New York Education Law §6530.
- 11/17/99 Determination and Order No. BPMC-99-285 by Department of Health found the applicant guilty of committing negligence on more than one occasion, gross negligence, fraudulent practice, failure to maintain accurate records, and excessive treatment and testing, and revoked his medical license.
- 04/11/00 Administrative Review Board (ARB), following appeal, amended the determination to sustain additional charges of practicing with incompetence on more than one occasion and gross incompetence, and otherwise sustained the determination and revocation.
- 06/21/01 Appellate Division, Third Department, after appeal, annulled determination, based on a technicality, and did not address other appellate issues.
- 11/14/02 New York Court of Appeals reversed the Appellate Division and remitted case to the Appellate Division for further review.
- 07/03/03 Appellate Division confirmed the ARB decision and the revocation.
- 09/23/03 New York Court of Appeals dismissed further appeal by Orens.
- '05 Application for restoration of license to practice medicine submitted.
- 10/29/07 Peer Committee restoration review.

BACKGROUND INFORMATION

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

Listed below is information from that packet, as well as from documents marked into evidence at the meeting. Further details pertaining to these documents and others may be found therein.

PRIOR DISCIPLINARY HISTORY

Action by State Board for Professional Medical Conduct

Case No. BPMC -99-285

On or about April 13, 1999, the Bureau of Professional Medical Conduct served the applicant with a Statement of Charges alleging that he had committed professional misconduct as defined in New York Education Law §6530 for having practiced the profession with negligence on more than one occasion, with gross negligence, with incompetence on more than one occasion, and with gross incompetence. He was also charged with practicing the profession fraudulently, with ordering excessive tests and treatment, and with failing to maintain accurate records. The charges stemmed from the applicant's treatment of ten patients between the years 1993 and 1996, all of whom he had treated for Lyme disease. Due to the similarity of the cases, evidence was only presented to the hearing committee for six of those patients.

The hearing committee found the applicant guilty of most of the charges, but not the

incompetence charges. The applicant was found to have diagnosed Lyme disease without conducting proper examinations or attempting to rule out other causes, and to have ordered excessive and unwarranted tests, which the committee also found to have been a fraudulent act for his own monetary enrichment. He was found by the committee to have placed his patients at risk by treating them inappropriately and by failing to adequately monitor them or follow up adverse reactions by some to medications. He also failed to properly record diagnostic or management plans. The committee revoked the applicant's license.

The applicant appealed the committee's determination to the Administrative Review Board (ARB), which amended the findings of the hearing committee so as to also find the applicant guilty of incompetence on more than one occasion and of gross incompetence, and otherwise sustained the findings and revocation. The applicant filed an Article 78 appeal, and the Appellate Division ordered a new hearing based on the composition of the hearing committee, indicating that the physician's assistant who had served on the panel along with two physicians, was not a "lay person" as required by Public Health Law §230. The Health Department then appealed, and the New York Court of Appeals reversed, indicating that a lay person could be anyone who was not a physician, and remitted the case to the Appellate Division, which, upon further review, confirmed the ARB decision and the revocation of the applicant's license on July 3, 2003.

APPLICATION FOR RESTORATION

The applicant submitted a restoration application which was undated, with attachments, some of which are summarized below.

Supporting Affidavits

The applicant submitted five affidavits in support of his application which recommended him as a caring and competent physician. Three of the affidavits were from physicians who had worked with the applicant, and two were from persons who were patients of the applicant or who knew a patient of the applicant.

Additional Attachments

The applicant attached a personal letter to his application, generally setting forth his love of the medical profession, which he had practiced for over 40 years, and his attempts to keep up with the profession.

DEPARTMENT'S EXHIBITS

OPD Investigators Reports

The Investigator's Case Summary Report dated April 24, 2006 included an outline of an interview with the applicant, a review of the supporting affidavits provided by the applicant, and a review of the court proceedings and disciplinary proceedings involving the applicant.

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

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

Letter from Dennis J. Graziano, Director of Professional Medical Conduct, dated November 17, 2006

The Office of Professional Medical Conduct indicated that it could not provide a

recommendation with respect to the application because of several omissions, including the fact that it was not signed or certified, did not include dates of attendance at grand rounds, and included no documentation of continuing education credits received from reviewing professional medical journals as alleged.

EVIDENCE ADMITTED AT THE MEETING

Exhibit "A"

Applicant's Exhibit "A" was a packet of documents entered into evidence at the hearing which consisted primarily of letters written by patients of the applicant who praised the treatment they had received from him. One letter was from a woman who indicated that she was one of the patients who was a subject of the OPMC trial. Additional letters of support were included from a New York Assemblywoman and a Pennsylvania Senator. Also included were letters written by the applicant, a flyer about a Lyme disease support group meeting which was going to be moderated by the applicant, and an undated magazine article entitled "A War Over Lyme Disease." That article concerned another physician from Long Island who was being prosecuted by the Health Department. The article suggested that there was an ongoing dispute between academics and insurance companies on one side, and doctors and patients on the other, about the prolonged use of antibiotics for the treatment of patients with rare intractable cases of Lyme disease, which could cost up to \$20,000.

Exhibit "B"

This exhibit was a letter dated October 30, 2007 from the applicant's son, also a physician, explaining that he had not attended his father's restoration meeting at his father's request, but that he

supported the application. It was provided to the committee after the meeting.

LA (Legal Advisor) Exhibit "A"

This exhibit was a letter to the applicant from Howard Goodman Esq. dated October 23, 2007 regarding the use of witnesses at the restoration meeting.

PEER COMMITTEE MEETING

On October 29, 2007, this Peer Committee met to consider this restoration matter. The applicant appeared before us personally and was not represented by an attorney. The applicant was advised of his right to have an attorney present and selected to proceed without one. Lydia Perez, Esq. represented the Division of Prosecutions (OPD).

The first witness to testify was the applicant himself. The applicant testified that he had been a physician for over 40 years with an internal medicine practice and had had no malpractice cases presented against him. He had a good reputation and was on staff at North Shore Hospital, Long Island, and Long Island Jewish Hospital. He stated that he had first become involved with treating Lyme disease after his daughter was diagnosed with chronic Lyme disease about 25 years ago. After watching her deteriorate, he took over her treatment, and after an extensive course of treating her with antibiotics, she got better and again became an energetic person. He then went on to treat more and more patients that he believed had Lyme disease, although it constituted only a small percentage of his practice.

The applicant admitted that he was over-zealous in his treatment strategy towards Lyme disease and that his approach was not the standard of care. He also admitted that he did not keep

adequate records at that time to support his treatment approach. He explained that at the time of the transgressions he was having personal health problems. He had undergone two open heart operations and had a prolonged illness. He stated that he greatly regrets that he may have over treated some patients which could have led to extra morbidity, and especially regrets that he had not done proper clinical trials to study the patients who presented for treatment so that today there would be a better understanding of the disease. Although he believes that he did help several patients with the disease, he admitted that the good he did could not erase his missteps. He did note to the committee that he believes that his punishment was much harsher than that given to other physicians who were sanctioned at that time for similar practices. He apologized for his prior actions, stating that he had spent the last seven years reflecting them. He indicated that he had paid a great price as a result of those actions, particularly in the loss of his license and of his patients that he cared for, along with his loss of face.

The applicant told the committee that he wanted his license back so that he could regain his dignity and so that he might have an opportunity to provide part-time volunteer work in a VA facility. He stated that he would not return to private practice since he is now over 80 years old. He believes that he could be of service in a supervised setting like a VA hospital because he has kept himself up-to-date with the profession as best he could without seeing patients, by attending weekly rounds at North Shore Hospital and by reading medical journals such as the New England Journal of Medicine, Annals of Internal Medicine, and JAMA. He has also reviewed the Medical Knowledge Self-Assessment books in internal medicine and has followed his son on rounds at John Hopkins Hospital, where his son is an Associate Director of Pulmonary Medicine and Critical Care, when he makes prolonged visits to Baltimore.

When asked on cross-examination about whether he had taken courses in record keeping or drug interaction, since he had been found at fault in those areas, the applicant stated that he had not taken anything specifically along those lines, but that he was reviewing the entire Internal Medical Review from Johns Hopkins Hospital, which is extensive. When asked about the finding by the OPMC that he had ordered excess tests for his own financial gain in conjunction with an interest he had in a health care facility, the applicant explained that he had had no real financial interest in the facility in question, but that he should have avoided any connection with it and he subsequently dropped any association with the facility. He indicated that he personally had not made any money on the testing.

In further reference to the charges of excessive testing, the applicant stated that at the time there had been no real definitive tests for Lyme disease, and he had therefore ordered numerous tests. He had two school teachers that he had tested and had ultimately treated extensively for Lyme disease who had both gotten well. Their insurance company however denied coverage for the treatment, and there was a hearing. At the hearing, a doctor testified as an expert on behalf of the insurance company against the treatment that he had provided, but the judge found in favor of his clients. According to the applicant, that expert told him after the trial "I'm going to get you for this." That expert was the same physician who testified against him at the BPMC hearing.

The committee asked the applicant to explain what he had been doing for the last five years since he lost his license. The applicant explained that he had had two operations and had undergone cardiac rehabilitation. As a result, he had not done any community service except for meeting with a few Lyme disease groups. As indicated earlier, he has continued to read medical journals, but has no documentation to support that. He stated that he is on Social Security and his legal residence is now

in Florida, but he spends half of the year at his residence in New York.

The next witness to testify was Mrs. MacDonald, who traveled up from Baltimore to testify on the applicant's behalf. She stated that her husband and subsequently her son were both diagnosed with Lyme disease in Baltimore. After trying treatment with about 50 doctors without success, she learned about the applicant's practice on Long Island, and took her husband and son to him for treatment. She stated that the applicant was a caring and dedicated physician who successfully treated her husband and son with intravenous antibiotics as well as oral antibiotics. Both got much better. She indicated that the applicant also held informational meetings once a month after hours at his office where patients with Lyme disease could learn more about the disease and could also talk to other patients who had the disease. Because she found that support so helpful to her family, she founded the Central Maryland Lyme Disease Support Group, and the applicant came to Maryland free of charge to talk to it.

In her closing argument, Ms. Perez indicated that OPD was not taking a position on the restoration application, but cautioned the panel that the applicant had the burden of proof to submit evidence that would compel a determination in his favor. She asked the panel to consider whether the applicant had shown enough remorse and proof of re-education so that he would not be a threat to the public. In his closing argument, the applicant stated that he was a caring and capable physician who had proved through his over 40 years of successful practice that he was not a threat to the public. He stated that he still had the intellectual capacity to continue to learn and grow.

RECOMMENDATION

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

We note that the courts have ruled that an applicant in these proceedings does not have to admit past wrongdoing the applicant does not believe that he has committed. He need not surrender his contention that he is innocent of charges in order to be re-admitted to the profession. Melone v. State Educ. Dep't, 581 N.Y.S.2d 894, 896. Therefore, in cases where an applicant denies his guilt to the original misconduct, the criterion of remorse is undercut and limited in its usefulness. In these circumstances, we instead must consider the other criteria, particularly whether the public is protected. In that regard, while this applicant is entitled to deny his past guilt, we still look for some acknowledgment from the applicant of the seriousness of the public record and his need to convince us of his trustworthiness to have his license restored.

In our meeting, we had the opportunity to observe, evaluate, and question the applicant. Although the applicant did not admit to wrongdoing with respect to all of the charges for which he was found guilty by the OPMC, he did express sincere remorse for his record keeping shortcomings and for over treating some patients. We also understand that he was not in good health at the time of

the incidents, and he acknowledged that his record keeping was not up to his usual standards. We also concur with the applicant that the treatment of Lyme disease was, and possibly still is, a controversial issue, that in all likelihood led to the applicant's prosecution. It was particularly noteworthy to this committee that the only cases selected for prosecution by OPMC were the applicant's Lyme disease cases, which constituted a very small percentage of his practice.

With respect to rehabilitation and re-education, although the applicant suffered from ill health for several years after loosing his license, he still often attended grand rounds at North Shore Hospital to reinforce his medical knowledge and continued to read several medical journals. In addition, we were positively influenced by the affidavit of Dr. Longo, who described the applicant as a compassionate and respected physician, and who opined that Lyme disease still did not have an accepted standard of care; and the supporting affidavit of Dr. Scherr, who had served as Director of the Department of Medicine at North Shore University Hospital when the applicant served in that department. Dr. Scherr confirmed in his affidavit that the applicant was attending grand rounds frequently at North Shore Hospital and that the applicant was reviewing medical journals. In addition, Dr. Longo confirmed in his affidavit that the applicant was attending conferences and lectures at North Shore Hospital.

Finally, we were favorably influenced by the fact that the applicant, other than for the three to four year period that was the subject of the charges that led to the loss of his license, had an exemplary reputation as a caring and dedicated physician who was not the subject of any malpractice claims during his 40 plus years in practice. We were also moved by his professed desire to continue to help the public by volunteering his services to veterans' hospitals. However, due to the amount of

time that the applicant has been away from clinical practice, we believe that he should be subject to a probationary period to ensure the protection of the public.

It is therefore our unanimous recommendation that execution of the revocation of the applicant's license to practice as a physician in the State of New York be stayed, and that the applicant be placed on probation for a period of five years under the terms and conditions of probation annexed hereto, made a part hereof, and marked as Exhibit "A." Upon successful completion of the probation, the applicant's license would be fully restored.

Respectfully submitted,

John Cordice, MD, Chair
Florence Kavalier, MD
James Norris, MD

Chairperson

Dated

EXHIBIT "A"

**TERMS OF PROBATION
OF THE PEER COMMITTEE**

PERRY ORENS

CALENDAR NO. 22991

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

2. That applicant shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, of any employment and/or practice, applicant's residence, telephone number, and mailing address, and of any change in applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;

3. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), NYSED, that applicant has paid all registration fees due and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by applicant to the NYSED, addressed to the Director, Office of Professional Discipline, as aforesaid, no later than the first three months of the period of probation;

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

5. That applicant shall only practice in an Article 28 facility as defined by the Public Health Law of the State of New York;

6. That applicant shall only practice as a physician in a supervised setting, under the supervision of a board certified physician in the type of medicine that the applicant is practicing, said supervising physician to be selected by applicant and previously approved, in writing, by the Director of the Office of Professional Medical Conduct;

7. That applicant shall have quarterly performance reports by said supervising physician

submitted to the New York State Department of Health (DOH), addressed to the Director, Office of Professional Medical Conduct, which evaluate the quality of applicant's performance in his place of employment and attest to his fitness to practice;

8. That applicant shall complete 30 hours of continuing medical education courses per year in the area of internal medicine;

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

10. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the OPMC may initiate a violation of probation proceeding.

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

_____X
In the Matter of the Application of

Perry Orens, M.D.

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

**REPORT OF
THE PEER
COMMITTEE
CAL. NO. 22991**

_____X

H

In the Matter of Perry Orena, Petitioner,
v.
Antonia C. Novello, as Commissioner of the
Department of Health of the State of
New York, et al., Respondents.

Supreme Court, Appellate Division, Third
Department, New York

(July 3, 2003)

Carpinello, J.

Proceeding pursuant to CPLR article 78 (initiated in this Court pursuant to Public Health Law § 230-c [5]) to review a determination of the Administrative Review Board for Professional Medical Conduct which revoked petitioner's license to practice medicine in New York.

When this matter was last before us, we held that the Hearing Committee of respondent State Board for Professional Medical Conduct, which heard charges of medical misconduct against petitioner, was not properly constituted (284 AD2d 26 [2001], *rev'd* 99 NY2d 180 [2002]). We therefore annulled a determination of the Administrative Review Board for Professional Medical Conduct (hereinafter ARB), which sustained most of the Hearing Committee's findings, and remitted the matter for a new hearing (*id.*). The Court of Appeals reversed, finding that the Hearing Committee was properly constituted, and remitted the matter to this Court for a determination of the issues we did not reach (99 NY2d 180 [2002]). In now addressing those issues, we find that none has merit.

First, we reject petitioner's challenges to the findings of fact and conclusions of law contained in the Hearing Committee's determination since this Court is without power to review such claims where, as here, petitioner has already sought review

from the ARB (*see Matter of Khan v New York State Dept. of Health*, 286 AD2d 562, 563 [2001]; *Matter of Weg v De Buono*, 269 AD2d 683, 685-686 [2000], *lv denied* 94 NY2d 764 [2000]). In any event, we have reviewed the Hearing Committee's determination and find nothing uncertain or equivocal about its findings, including the use of the disjunctive "and/or." We reach a similar conclusion with regard to the charges themselves, which were reasonably specific and sufficiently apprised petitioner so that he could prepare an adequate defense (*see Matter of Block v Ambach*, 73 NY2d 323, 332-333 [1989]).

Turning to the ARB's determination, petitioner contends *393 that its findings of negligence, gross negligence, fraudulent practices and performance of excessive tests on petitioner's Lyme disease patients are not supported by the evidence. Our review of the ARB's determination is limited to "whether such decision is arbitrary and capricious, affected by an error of law or an abuse of discretion" (*Matter of Pisanoni v New York State Bd. for Professional Med. Conduct*, 266 AD2d 592, 593 [1999], quoting *Matter of Spartalis v State Bd. for Professional Med. Conduct*, 205 AD2d 940, 942 [1994] [1999], *lv denied* 84 NY2d 807 [1994]). Essentially, we look to whether "the ARB's determination has a rational basis and is factually supported" (*Matter of Khan v New York State Dept. of Health*, *supra*, at 563). Based upon our review of the record, we find that it does. The Bureau of Professional Medical Conduct presented sufficient medical testimony to support the charges which petitioner was ultimately found to have committed. Although petitioner gave contrary testimony, this presented a credibility issue for the ARB to resolve (*see Matter of Solomon v Administrative Review Bd. for Professional Med. Conduct*, 303 AD2d 788, 789 [2003]; *Matter of Steckmeyer v State Bd. for Professional Med. Conduct*, 295 AD2d 815, 817 [2002]).

Lastly, we find no merit to petitioner's claim that

307 A.D.2d 392, 761 N.Y.S.2d 547, 2003 N.Y. Slip Op. 15755

(Cite as: 307 A.D.2d 392, 2003 N.Y. Slip Op. 15755)

the penalty of revocation of his medical license was excessive. Given the scope and nature of the charges, we cannot conclude that the penalty "is so incommensurate with the offense as to shock one's sense of fairness" (*Matter of D'Amico v Commissioner of Educ. of State of N.Y.*, 167 AD2d 769, 771 [1990]; see *Matter of Mayer v Novello*, 303 AD2d 909, 910 [2003]). Therefore, we decline to disturb the ARB's determination.

Cardona, P.J., Mercure, Mugglin and Rose, JJ., concur.

Adjudged that the determination is confirmed, without costs, and petition dismissed.

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State,
State of New York.

N.Y.A.D., 2003.

Matter of Orens v Novello

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(Cite as: 100 N.Y.2d 614)

H

Orens, Matter of, v Novello

Court of Appeals of New York

September 23, 2003

(3d Dept: 307 AD2d 392)

APPEALS ON CONSTITUTIONAL GROUNDS

appeal dismissed

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State,
State of New York.

N.Y. 2003.

Orens, Matter of, v Novello

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