



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

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OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

03-471

PUBLIC

July 25, 2003

Lorenzo Margini, Physician  
9 East 96<sup>th</sup> Street  
New York, New York 10128

Re: Application for Restoration

Dear Dr. Margini:

Enclosed please find the Commissioner's Order regarding Case No. CP-03-04 which is in reference to Calendar No. 19523. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

Daniel J. Kelleher  
Director of Investigations

By: *Gustave Martine*

Gustave Martine  
Supervisor

cc: Robert S. Asher, Esq.  
295 Madison Avenue - Suite 700  
New York, New York 10017

Case No. CP-03-04

It appearing that the license of LORENZO MARGINI, 9 East 96<sup>th</sup> Street, New York, New York 10128, to practice as a physician in the State of New York, having been revoked by a Hearing Committee of the State Board for Professional Medical Conduct effective October 22, 1997, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on April 29, 2003, it was

VOTED that the petition for restoration of License No. 113598, authorizing LORENZO MARGINI to practice as a physician in the State of New York, be denied, but that the order of revocation of said license is stayed, and said LORENZO MARGINI is placed on probation for a period of five years under specified terms and conditions, and upon successful completion of the probationary period, his license to practice as a physician in the State of New York shall be fully restored.

Case number  
CP-03-04  
March 31, 2003

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: Lorenzo Margini**

Attorney: Robert Asher

Lorenzo Margini, 9 East 96<sup>th</sup> Street, New York, NY 10128, petitioned for restoration of his physician license. The chronology of events is as follows:

- 08/01/72 Issued license number 113598 to practice as a physician in New York State.
- 08/12/97 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 10/07/97 Hearing Committee of the State Board for Professional Medical Conduct revoked license.
- 10/22/97 Revocation order served.
- 12/15/00 Submitted application for restoration.
- 03/06/02 Peer Committee restoration review.
- 01/08/03 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 02/14/03 Committee on the Professions restoration review.
- 03/31/03 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

**Disciplinary History.** (See attached disciplinary documents.) On August 12, 1997, the Department of Health charged Dr. Margini with one specification of professional misconduct based upon his conviction of committing acts constituting crimes under New York State law. Dr. Margini pled guilty in the Supreme Court of the State of New York, County of Kings, to one count of Offering a False Instrument for Filing in the First Degree, a class E felony. The charges related to Medicaid fraud. As

part of his guilty plea, Dr. Margini agreed to make restitution in the amount of \$300,000 and was placed on probation for five years. On October 7, 1997, a Hearing Committee of the State Board for Professional Medical Conduct found him guilty of the charge of professional misconduct and voted to revoke his physician license. The revocation order was served on October 22, 1997.

Dr. Margini submitted an application for restoration of his license on December 15, 2000.

**Recommendation of the Peer Committee.** (See attached "Report of the Peer Committee.") The Peer Committee (Lopez, Gitman, Riggins) met with Dr. Margini on March 6, 2002 to review his application for restoration. In its report, dated January 8, 2003, the Committee recommended that the order of revocation of Dr. Margini's physician license be stayed, that he be placed on probation for five years under specified terms, and that upon successful completion of the probationary period, his license be fully restored. The recommended probationary terms included a prohibition from maintaining a solo practice, a requirement that he practice only under supervision with other licensed physicians, and that his billings be audited.

**Recommendation of the Committee on the Professions.** On February 14, 2003, the Committee on the Professions (Duncan-Poitier, Muñoz, Ahearn) met with Dr. Margini to review his application for restoration. Robert Asher, his attorney, accompanied him.

The Committee asked Dr. Margini to explain what led to the loss of his license and what was now different. He replied that his license was revoked because of a felony conviction resulting from Medicaid fraud in the early 1990's. He said that there was no excuse for what he did and he knew at the time that what he was doing was wrong. He reported that for approximately six years he billed Medicaid for longer psychiatric sessions with patients rather than the actual time he spent with them. Since his revocation, Dr. Margini stated that he went through four phases - - denial, anger, resistance, and acceptance. He indicated that he now realizes that he deserved the punishment he received and that it was "fair and just." He explained, however, that this realization didn't come all at once.

Dr. Margini said that he continues to receive much support from his family and friends. He indicated that, in general, he now has a much better understanding of ethics and the medical profession. He said that he was "not an evil man" but that he was certainly weak. At the time of his fraudulent billings, Dr. Margini said that he rationalized his actions because he felt "everyone did it" and he "could get away with it." He told the Committee that his perception of what is wrong and what is right has greatly improved and explained how the three-day seminar he attended on professional ethics helped him. He said that this seminar with "fellow transgressors" forced him, in a way, to discuss his misconduct in public and really think about his ethical standards and those of the medical profession.

Dr. Margini reported that since his revocation he has been involved with the homeless in New York City through a soup kitchen. He said that at first he was just serving food but eventually started working in the counseling office. He stated that his

volunteer experiences helped provide him with a better understanding of "that level of society." The Committee asked why he volunteered if it was not a condition of his criminal sentence. He replied that he wanted to do something for the underserved, the group he harmed through Medicaid fraud. Dr. Margini said that he feels that he is able to easily relate to those who come to the soup kitchen and believes that they view him as nonjudgmental. He stated, "I reach out to beggars and others on the street. They need to be touched and listened to. Others avoid them."

The Committee asked Dr. Margini why he defrauded Medicaid. He replied that he wanted to have a private practice and about 90% of his patients were on Medicaid. He reported that his practice became very successful as many of his patients referred others. He said that he started seeing his patients for fewer minutes so that he could see more patients. Dr. Margini indicated that the Medicaid reimbursements were low and that he felt he couldn't continue his practice under those billing rates. He said that he started billing at the longer session rates to increase his income and found that "inertia was a factor" in his continuing fraudulent billings. Dr. Margini told the Committee that his professional ability was never questioned and he even saw some patients that he never billed.

The Committee asked Dr. Margini to explain how the \$300,000 restitution amount was determined. He explained that this was "negotiated between the lawyers." He said that it was his understanding that Medicaid took his total billing amount of \$600,000 for the six-year period for which Medicaid charges were questioned and divided that amount in one-half to arrive at the restitution amount. Dr. Margini said that the formula they used implied that the billing for his total practice during that time was fraudulent, but he told the Committee that that was not so. He indicated that he did not keep very good records at that time and now realizes how essential and crucial accurate and complete records are. He said that he has paid approximately \$225,000 to \$230,000 in restitution and had been making monthly payments. He reported that he had to file for bankruptcy and is waiting to make an agreement on the remaining payments. Dr. Margini described his efforts to remain current in the medical profession.

Dr. Margini told the Committee that one of the probationary terms recommended by the Peer Committee would exclude him from private practice. He indicated that he wanted to return to the neighborhood where he practiced and such a restriction would prohibit him from helping some of those patients he had to abandon after the revocation of his license. The Committee noted that the Peer Committee recommended that he be prohibited from "solo" but not "private" practice. The Committee indicated that the recommended restriction would allow him to work in a private practice with other physicians in accordance with the other recommended probationary conditions. Dr. Margini said that with that understanding he had no concerns about the Peer Committee's recommendations.

The overarching concern in all restoration cases is public protection. Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a license to practice as a physician in New York State. 8NYCRR §24.7(2) charges the Committee on the Professions (COP) with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated in law or regulation, the Board of Regents has instituted a

process whereby a Peer Committee 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 so serious that it resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept as valid whatever is presented to it by the petitioner but to weigh and evaluate all of the evidence submitted and to render a recommendation based upon the entire record.

The COP concurs with the Peer Committee that Dr. Margini has met the remorse, rehabilitation, and reeducation criteria for restoration of his license. Dr. Margini identified greed as the primary root cause of his misconduct, feeling that Medicaid reimbursement rates were inadequate. He demonstrated that he has accepted the revocation of his license and has moved forward in his rehabilitation. With the help of friends, his family, and a three-day ethics course for health professionals, he explained how his rehabilitation progressed through four stages - denial, anger, resistance, and acceptance. Margini demonstrated convincingly that he is now at the acceptance stage. Based upon his apparent insight into both the causes of his behavior and the process of change he has undergone, the COP finds no evidence that the public would be placed in danger were his license restored. Dr. Margini also shows remorse for his actions. He volunteered to work with the underserved in a soup kitchen and has been counseling many who needed his help - addicts, the poor and the homeless. He realizes that his misconduct hurt many of his needy patients who no longer had psychiatric help as well as depriving others of help by taking undeserved Medicaid dollars. He demonstrates a sincere commitment and caring for this population. The COP notes that the Department of Health does not oppose restoration of Dr. Margini's license and stated that he "accepts responsibility for his actions, understands the ethical implications and appreciates the consequences of his behavior." The COP accepts the judgment of the Peer Committee that Dr. Margini satisfies the reeducation criteria for restoration. In summary, the COP finds that Dr. Margini presented a compelling case for the restoration of his physician license.

Therefore, after a careful review of the record and its meeting with him, the Committee on the Professions voted unanimously to recommend that the order of revocation of Dr. Margini's physician license be stayed for five years, that he be placed on probation for five years under specified terms and conditions, attached to the Report of the Peer Committee and labeled as Exhibit "B," and that upon successful completion of the probationary period, his license be fully restored.

Johanna Duncan-Poitier, Chair

Kathy A. Ahearn

Frank Muñoz



# The University of the State of New York

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

-----X

In the Matter of the Application of

**LORENZO M. MARGINI**

**REPORT OF  
THE PEER  
COMMITTEE  
CAL. NO. 19523**

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

-----X

Applicant, LORENZO M. MARGINI, was authorized to practice as  
a physician in the State of New York by the New York State  
Education Department by the issuance to him of license No. 113598  
on August 1, 1972.

## PRIOR DISCIPLINARY PROCEEDING

On or about October 22, 1997 applicant's license to practice  
as a physician in the State of New York was revoked by the  
Department of Health (DOH).

This was the result of a hearing held by the DOH in which  
applicant was found guilty of one specification of professional  
misconduct. Applicant's misconduct consisted of a plea of guilty  
to one count of Offering a False Instrument for Filing in the  
First Degree, a class E felony, in connection with the New York

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State Medicaid program. This guilty plea was entered on January 15, 1997 in New York State Supreme Court, Kings County.

As part of his plea agreement, applicant agreed to make restitution in the amount of \$300,000. An initial payment of \$150,000 was to be followed by monthly payments of \$2715.32 per month over a five year period.

The gravamen of applicant's fraudulent conduct was his charging Medicaid, as a psychiatrist, for services he did not render. In effect he would code his visits with patients, his psychiatric sessions with them, as 37-45 minute visits, when in fact they were much shorter sessions. This resulted in greater reimbursement than he was entitled to.

#### APPLICATION FOR RESTORATION

As part of his petition for restoration, applicant submitted a number of supporting affidavits in addition to proof of attendance at continuing medical education courses.

In the petition itself he outlined some of the activities he has engaged in since his revocation of licensure, which was expanded upon by his own testimony and that of those who appeared on his behalf.

Applicant stated that he is extremely remorseful for his acts, has thought about what caused him to commit them and has participated in activities which he deemed necessary to complete before applying for restoration.

He has read and subscribed to many medical journals, completed continuing medical education (CME) and has considered



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the ethical implications of his conduct, primarily through his completion of the Probe program, a course designed to help professionals deal with ethical and other lapses.

Applicant has also volunteered his time to the Holy Apostles Soup Kitchen in New York City.

**PEER COMMITTEE MEETING**

On March 6, 2002 this Peer Committee met to review applicant's petition for restoration. Applicant appeared in person and was represented by Robert S. Asher, Esq. The Department was represented by Jameione Winston-Day, Esq. The legal advisor to the peer committee was Howard J. Goodman, Esq.

Prior to applicant's testimony, a number of witnesses appeared on his behalf. The first to do so was Joseph C. D'Oronzio, Ph.D., the Executive Director of the Ethics Group. They offer programs in professional/problem based ethics (Probe), which addresses the ethical education and rehabilitation of health professionals who have received disciplinary action for ethics transgressions.

Applicant completed all the sessions in the program and was characterized as a very "direct and engaged" participant who was self-reflective about his own role in his situation.

Applicant expressed remorse and was clear about who he had hurt--his patients, his family and his profession.

Dr. D'Oronzio supported applicant in his petition to support his license.

In addition to Dr. D'Oronzio's testimony and letter which

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accompanied the petition, the essay which applicant wrote as part of the ethics program was also attached. Of note in the essay was applicant's statement that he thought he "deserved punishment for (his) misconduct but, to this day... think that the sentence was too harsh."

The next to testify on applicant's behalf was Clyde Kuemmerle, Ph.D. Dr. Kuemmerle is the program coordinator for the soup kitchen at the Church of the Holy Apostles in Manhattan. He first met applicant in 2000 when applicant first started volunteering there. Applicant told Dr. Kuemmerle that he had lost his license to practice medicine and disclosed the reason for it, namely the fraudulent billing of Medicare and Medicaid. Applicant volunteers in the food program and also serves as a counselor. He estimates that applicant has put in over 350 hours at the soup kitchen, at least half of which have been in counseling recipients of the center's services.

Dr. Keummerle said that applicant would continue to serve this community and would recommend the restoration of applicant's license.

Dorson Liss, M.D. next testified. Dr. Liss is a psychiatrist who first met applicant in 1979 while the former was a resident at Metropolitan Hospital. They then later worked together at the South Beach Psychiatric Center in Brooklyn, New York. He described applicant's abilities as brilliant.

Applicant's wife, Maria Baratta, then testified on applicant's behalf. Ms. Baratta is a licensed social worker in

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New York State who first met applicant while he was a consulting psychiatrist to an agency she was working at.

She testified as to applicant's great shame at his misconduct and his remorse over failing his patients and his profession. She also noted that patients still ask for him and that the foreign-speaking population he used to serve in Brooklyn remains underserved.

Ms. Baratta also noted his growth as an individual through the birth of his son and his more active involvement with his religion and that in sum he is a better person than he was before.

Applicant then testified and in turn responded to questions posed by the panel and the Department.

Applicant said that he started to "upcode" in about 1991 or 1992. He explained how upcoding refers to the practice of billing for patient sessions at a higher rate than is permissible. In other words, he would bill Medicaid and Medicare as if he was seeing patients for anywhere from 37 to 45 minutes instead of the shorter time he was actually seeing them, resulting in greater reimbursement. He knew when he was doing it at the time that it was wrong, but it reflected a "profound lack of judgment" and was motivated by a need for money. He believed that the amounts in question which he was billing were insignificant and that he wouldn't be caught: that, he says, is the "arrogant part". The restitution figure of \$300,000 that was arrived at by the government was roughly 50% of his gross billing during the 6 years in question.

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As part of his sentence he received 5 years' probation, with no mandated community service. Applicant eventually decided to volunteer through the Church of the Holy Apostles because it is the largest homeless feeding operation in the country, and it was his desire to work with the homeless. His contribution consists of participating in group counseling and referring participants to various social services agencies. This work comes to 8 hours per week.

Applicant keeps abreast of the psychiatric field through reading professional journals and attending seminars as well as reading related online sites.

Applicant discussed his experience at Probe, where he went to gain insight into, and treatment for, his misconduct. He described it as tiring but useful and uplifting.

Applicant was also asked to discuss what he meant when he said that he was punished too severely.

He believed that a complete revocation was too harsh in that the state could have benefited from his continued licensure and that the patient population he treated would have been better served by some sort of suspension followed by compulsory community service.

With greater perspective he now believes the punishment fit the crime and that he harmed society, as well as his family, through his actions.

If relicensed, applicant would like to reconnect with the patients that he was forced to leave (and who still request him)

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and continue his work with the homeless through the Holy Apostles Church. Applicant asserted that his Italian-speaking patients in south Brooklyn currently do not have any doctors who share their language.

Applicant assured us that a repeat of his misconduct would not occur because he believes he has learned his lesson, that the consequences were severe, and that he wants to be a positive role model for his young son.

Applicant supports himself through a small pension from New York State, his wife's salary and some grants from his Brooklyn office. He said that his job search has been frustrated by his conviction and that he has been turned down for several positions.

Applicant did not enroll in any ongoing therapy but did see a psychiatrist in order to obtain an antidepressant. He described his work with the Probe program and the Ethics Group as the perfect therapy.

Of the \$300,000 which applicant was required to repay, applicant still owes \$75,000.

Applicant spoke of the loneliness of the solo practitioner, stating that what he would do differently if allowed to practice again would be to work in a clinic setting, where he could get feedback from others.

Applicant believes that he is rehabilitated in that he was morally weak but that he is stronger now. He accomplished this with the help of his wife and friends, the ethics seminar he took, and a period of reflection upon his mistakes. He also cited his

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becoming a parent as a growth factor in his maturity.

The Department's representative, in her closing remarks, did not take a position on applicant's petition, but reminded the panel that it had the power to impose certain restrictions on his practice if it was their decision to restore his license. Ms. Winston-Day also noted that applicant has demonstrated an effort to turn himself around and indicated in his testimony that he would not engage in insurance fraud again. However, she believed the public's protection would be best safeguarded by having applicant's practice monitored.

Applicant's counsel noted in his closing statements that any reinstatement of applicant to the ranks of Medicaid and/or Medicaid providers is not automatic and that it is highly unlikely that he would ever be re-enrolled in their programs.

#### RECOMMENDATION

It is the unanimous recommendation of the panel that applicant's petition for restoration of his license to practice as a physician in the State of New York be granted, but with conditions.

We believe that applicant recognizes that he had made a terrible mistake in billing fraudulently as he did and that he has been sufficiently rehabilitated through his participation in the ethics course he attended as well as his volunteer service at the Holy Apostles soup kitchen. Additionally, applicant has kept abreast of the profession through his reading of many medical journals and his CME activities.

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Further, the testimony and affidavits supplied by applicant's witnesses all were highly persuasive in their description of applicant's skills as a practitioner and in his rehabilitation and remorse for his misconduct.

While we remain concerned that applicant has not fully made restitution on the outstanding fine he owes the government in his criminal matter, that is beyond our purview to enforce.

Therefore, based upon the foregoing, we unanimously recommend that applicant's petition for the restoration of his license to practice as a physician in the State of New York be granted, and that applicant be placed on probation for a period of five years, subject to the terms of probation annexed hereto, made a part hereof and marked as Exhibit "A".

Respectfully submitted,

Rafael Lopez, M.D.,  
Chairperson

Paul Gitman, M.D.

Delores Riggins, Public Member

Rafael Lopez 1/8/03  
Chairperson Dated

EXHIBIT "B"

TERMS OF PROBATION  
OF THE PEER COMMITTEE

LORENZO M. MARGINI

CALENDAR NO. 19523

1. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
2. That applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), Corning Tower, Room 438, Empire State Plaza, Albany, NY 12237, 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 may not maintain a solo practice of medicine and/or psychiatry during the period of probation, but shall practice only with other licensed physicians in a supervised office setting.
4. That, during the period of probation, applicant shall have applicant's practice monitored, at applicant's expense, as follows:
  - a. That said monitoring shall be by a physician selected by applicant and previously approved, in writing, by the Director of the Office of Professional Medical Conduct;
  - b. That applicant shall be subject to random selections and reviews by said monitor of applicant's patient and office records, in regard to applicant's practice, and applicant shall also be required to make such records available to said monitor at any time requested by said monitor; and
  - c. That said monitor shall submit a report, once every four months, regarding the above-mentioned monitoring of applicant's practice to the Director of the Office of Professional Medical Conduct;
5. That applicant, at applicant's expense, shall, during the period of probation, have applicant's billings audited for services rendered during the period of probation, said auditing to be performed by an auditor selected by the Director of the Office of Professional Medical Conduct;



6. That applicant shall only practice as a physician in a supervised setting under the supervision of an other licensed physician, 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 submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that applicant has paid all registration fees due and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by applicant to the Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;
8. 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;
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.