

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12230

OFFICE OF PROFESSIONAL DISCIPLINE, A.V. ZOGG BLDG., 800 FOURTH STREET, RM. 317, LIVERPOOL, NEW YORK 13088

September 19, 1997

Andre Nehorayoff, Physician
10 Cooper Road
Scarsdale, New York 10583

Re: Application for Restoration

Dear Dr. Nehorayoff:

Enclosed please find the Commissioner's Order regarding Case No. 97-67-60R which is in reference to Calendar No. 0015007. 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: Amy T. Kulb, Esq.
Jacobson & Goldberg
585 Stewart Avenue
Garden City, New York 11530

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OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

The University of the State of New York
Education Department



IN THE MATTER

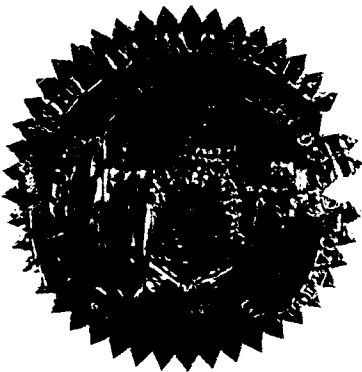
of the

Application of ANDRE NEHORAYOFF
for restoration of his license to practice
as a physician in the State of New York

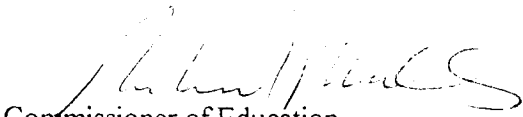
Case No. 97-67-60R

It appearing that the license of ANDRE NEHORAYOFF, 10 Cooper Road, Scarsdale, New York 10583, to practice as a physician in the State of New York, was revoked by action of the Board of Regents on December 20, 1991, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having determined, in accordance with the terms of their vote, to deny the petition, now, pursuant to action taken by the Board of Regents on June 12, 1997, it is hereby

ORDERED that the petition for restoration of License No. 115290, authorizing ANDRE NEHORAYOFF 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 15th
day of September, 1997.


Commissioner of Education

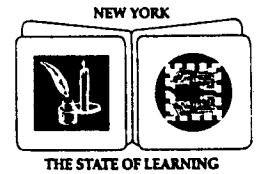
Case No. 97-67-60R

It appearing that the license of ANDRE NEHORAYOFF, 10 Cooper Road, Scarsdale, New York 10583, to practice as a physician in the State of New York, having been revoked by action of the Board of Regents on December 20, 1991, 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, including the letter submitted on behalf of petitioner by his counsel, the Regents determined to reject the recommendations of the Committee on the Professions ("Committee") and the Peer Review Panel on the grounds that, in light of the seriousness of the original offense, the size of petitioner's practice at that time, and the Regents' determination that petitioner's apparent attitude about the adverse outcomes which occurred to his patients, as described in the report of the Committee, did not reflect an appropriate degree of concern for them, and in consideration of the reservations and qualifications expressed by the expert consultant retained to evaluate petitioner, and the concerns expressed in the report of the Committee on the Professions,

Under the circumstances of this case, the Regents were not satisfied that the amount and type of supervision which could be available in practice conducted in a facility operated pursuant to Article 28 of the Public Health Law would be sufficient to protect the public health, safety and welfare, now, pursuant to action taken by the Board of Regents on June 12, 1997, it was

VOTED that the petition for restoration of License No. 115290, authorizing ANDRE NEHORAYOFF to practice as a physician in the State of New York, be denied.

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THE STATE EDUCATION DEPARTMENT THE UNIVERSITY OF THE STATE OF NEW YORK/ALBANY, NY 12230

May 23, 1997

ASSOCIATE COMMISSIONER FOR THE PROFESSIONS
OFFICE OF THE PROFESSIONS

FOR EXECUTIVE SESSION

To: The Honorable the Members of the Board of Regents
Committee on Professional Practice

Subject: Report of the Committee on the Professions (Johanna Duncan-Poitier, Chair,
Frank Muñoz, Joseph B. Porter) Regarding the Petition of Andre Nehorayoff
for Restoration of His Medical License

Attached is the report of the Committee on the Professions pertaining to the petition for restoration of the medical license of Andre Nehorayoff. The recommendation followed an investigation and a personal appearance before the Committee on the Professions. The salient facts in the case and recommendation of the Committee on the Professions are set forth in the attached report of the Committee.

Recommendation:

On behalf of the Committee on the Professions, I recommend the following action:

VOTED: That the Board of Regents stay the revocation of the medical license of Andre Nehorayoff and that he be placed on probation for ten years under specified terms and conditions.

Respectfully submitted,

Johanna Duncan-Poitier

Approved:

Date

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

Report of the Committee on the Professions
Application for Restoration of Medical License

Re: Andre Nehorayoff

Attorney: Amy T. Kulb

Andre Nehorayoff, 10 Cooper Road, Scarsdale, New York 10583, petitioned for restoration of his medical license. The chronology of events is as follows:

- 01/22/73 Issued license number 115290 to practice medicine in New York State.
- 02/19/91 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 02/25/91 License summarily suspended by Department of Health.
- 12/11/91 Regents Review Committee recommended three years' suspension, execution stayed, three years' probation under specified terms and conditions.
- 12/20/91 Board of Regents voted revocation.
- 12/24/91 Commissioner's Order effective.
- 06/24/93 Petition for restoration submitted.
- 03/10/95 Peer Panel restoration review.
- 12/28/95 Report and recommendation of Peer Review Panel. (See "Recommendation of the Peer Review Panel.")
- 05/01/96 Report and recommendation of Committee on the Professions. (See "Recommendation of the Committee on the Professions.")

Disciplinary History. (See attached report of the Regents Review Committee.) On February 19, 1991, the Department of Health charged Dr. Nehorayoff with professional misconduct. On February 21, 1991, the Commissioner of Health determined that the continued practice of medicine by Dr. Nehorayoff constituted an imminent danger to the people of New York State and issued an order summarily suspending Dr. Nehorayoff's license to practice medicine in New York State. The Hearing Committee (Ellman, Shamberger, Gettinger) of the State Board for Professional Medical Conduct

issued its report on June 10, 1991. The Hearing Committee found Dr. Nehorayoff guilty of practicing the profession with negligence on more than one occasion and with committing unprofessional conduct by failing to maintain accurate patient records. By a vote of 2 to 1, the Hearing Committee recommended that Dr. Nehorayoff's license be suspended for three years with the last two years stayed, providing that Dr. Nehorayoff enter a qualified residency program monitored by the Office of Professional Medical Conduct of the New York State Department of Health.

On August 2, 1991, the Director of the Office of Public Health of the New York State Department of Health issued the recommendation of the Commissioner of Health. It was recommended that the Findings of Fact and Conclusions of the Hearing Committee be accepted, but that the Recommendation of the Hearing Committee be rejected and that Dr. Nehorayoff's license be revoked.

In its report dated December 11, 1991, the Regents Review Committee (Chodos, McKennan, Postel) also found Dr. Nehorayoff guilty of practicing the profession with negligence on more than one occasion and with committing unprofessional conduct by failing to maintain accurate patient records. However, the Regents Review Committee recommended that the measure of discipline recommended by the Hearing Committee and the Commissioner of Health's designee be modified. The Regents Review Committee recommended that Dr. Nehorayoff's license be suspended for three years, execution of said suspension be stayed, and that he be placed on probation for three years under specified terms and conditions.

On December 12, 1991, the Board of Regents voted to revoke Dr. Nehorayoff's license to practice medicine in New York State. The Commissioner's Order became effective on December 24, 1991.

Recommendation of the Peer Review Panel. (See attached report of the Peer Review Panel.) The Peer Review Panel (Iraj, Lee, Santiago) met on March 10, 1995. In its report dated December 28, 1995, the Panel recommended that the revocation of Dr. Nehorayoff's license be stayed, and that he be placed on probation for three years under specified terms and conditions including the following:

- (1) that he not perform any procedures for the termination of pregnancies, including abortions and dilation and evacuation for fetal demise;
- (2) that he practice only in an institutional, hospital setting, or in private practice with another physician, under the supervision of a physician board certified in obstetrics and gynecology;
- (3) that said supervising physician submit quarterly reports on the quality and adequacy of Dr. Nehorayoff's practice of medicine;

(4) that Dr. Nehorayoff obtain hospital privileges in New York State before he resumes the practice of medicine; and

(5) that during the period of probation, Dr. Nehorayoff successfully complete a plan of continuing medical education consisting of the yearly minimum of continuing medical education required each year by the American College of Obstetrics and Gynecology.

Recommendation of the Committee on the Professions. On May 1, 1996, the Committee on the Professions (Duncan-Poitier, Porter, Muñoz) reviewed the petition of Dr. Andre Nehorayoff for the restoration of his license as a physician in New York. Dr. Nehorayoff appeared personally and was represented by his then attorney, Mr. George Weinbaum.

Dr. Nehorayoff began the meeting by summarizing his continuing education efforts. He pointed to documents in the record that listed the continuing education courses he had completed and stated that, through the use of a computer, he has been in constant contact with the American College of Obstetrics and Gynecology. He stated that he also attends Grand Rounds at Albert Einstein Hospital. Dr. Nehorayoff said that he also purchased a series of prologue books he completed, for which he received 25 hours of continuing education credit.

The Committee questioned Dr. Nehorayoff regarding the circumstances of the incidents that led to the loss of his license. Dr. Nehorayoff stated that the problems involved five patients for whom he performed second trimester abortions. He told the Committee that he decided he would no longer perform abortions should his license be restored. Dr. Nehorayoff said that he intended to restrict his practice to obstetrics and gynecology. Dr. Nehorayoff went on to explain that he became really isolated after the loss of his license. He stated that he felt sad for what happened to the patients and he shared their pain and suffering. Dr. Nehorayoff said that he was a patient in surgery himself within the last two years and that he recognizes what it is like to be the patient rather than the doctor.

The Committee asked Dr. Nehorayoff his reaction to the recommendation of the Peer Review Panel. Dr. Nehorayoff replied that he agrees with the recommendation and believes that he should be on probation for the three-year period recommended. He stated that he would not practice alone and believed that he could now handle emergency situations much better.

The Committee noted that the record indicated that Dr. Nehorayoff had taken shortcuts in his practice of medicine that had contributed to the incidents which led to the revocation of his license and asked Dr. Nehorayoff to respond. He replied that he

had a very large practice and did not spend enough time with each patient. He said he tried to make up for his lack of time by taking some shortcuts, which resulted in a lack of sufficient attention to patients as he was overwhelmed by the total practice and the other events that were happening in his life at that time. Dr. Nehorayoff stated that at that time he was being harassed by anti-abortion demonstrators and he was going through a highly publicized divorce which was the first such suit under a new divorce law in New York State.

Dr. Nehorayoff asserted that he has never had problems in his practice of obstetrics and gynecology; it was only the abortion procedures where he had problems. The Committee asked Dr. Nehorayoff what he intended to do to prevent such serious errors in his practice from recurring. He stated that his mistakes related to being alone in the practice of medicine. He said that now if he needed help, he would ask for it. He added that he planned to have hospital privileges and would, therefore, be able to take full responsibility for his patients even if they required hospitalization. Dr. Nehorayoff contended that he is more up-to-date with his knowledge of medicine now than when he was in private practice since he has had much more time to spend on continuing education activities. Dr. Nehorayoff also said in the future he would spend more time with each patient to assure that he was not taking shortcuts in their care.

Dr. Nehorayoff stated that "the past five years has really woke me up." He said that the decision of the Board was done for the well being of the public and he understood that his license was revoked for not taking proper care of the public.

In response to a question by the Committee, Dr. Nehorayoff stated that during the period of 1983-1990 he estimated that he performed 1,100 to 1,200 abortions per year. He also estimated that this constituted approximately 10% of his practice. When asked about the cases where he was found negligent for not using laminaria, Dr. Nehorayoff said this was basically a result of his lack of knowledge of the proper use of this procedure, which was relatively new at that time. He explained that he subsequently worked as a volunteer for Planned Parenthood for a three-month period and learned about the appropriate use of laminaria.

When asked about the incident where the patient died, Dr. Nehorayoff stated that there was currently litigation continuing in that matter. He said that he asked the patient to consent to admission to the hospital and that she said it was not necessary. He stated that he tried to contact her 24 hours after the operation but that she had provided an incorrect telephone number on the forms she gave to his office. The patient subsequently bled to death three days later. Dr. Nehorayoff stated that the patient who died did not want hospital admission and did not want her family to know that she had undergone an abortion.

In closing the meeting with the Committee on the Professions, Dr. Nehorayoff stated that he had delivered almost 10,000 babies in the 19 years that he had been practicing and that there was not one single lawsuit from his gynecological or surgical practice. He further indicated that the only problems he experienced were with abortion cases and that he would not be able to do abortions as a term of probation which was established by the Peer Review Panel. Dr. Nehorayoff concluded by stating that he believed that he was much better prepared now to practice medicine in New York.

The Committee on the Professions in its deliberations on this petition was troubled by the lack of follow through on Dr. Nehorayoff's part in treating his patient who subsequently died. In addition, the Committee, as a lay Committee, had difficulty evaluating Dr. Nehorayoff's claim that he delivered almost 10,000 babies in the last 19 years on balance against the five serious incidents of negligence, including a patient's death. To assist the Committee in its evaluation it gave Dr. Nehorayoff the opportunity to provide the expert opinion and recommendation of a physician certified by the American Board of Obstetrics and Gynecology selected by Dr. Nehorayoff and approved by the Executive Secretary of the State Board for Medicine.

The report of this expert, provided at Dr. Nehorayoff's expense, was then evaluated by a subcommittee of the State Board for Medicine, including a specialist in the area of obstetrics and gynecology.

The expert consultant selected serves as Chairman of the Department of Obstetrics and Gynecology at the Jamaica Hospital Medical Center and has over 30 years of experience in training, supervising, and evaluating physicians in all aspects of obstetrics and gynecology. This consultant's recommendation was that Dr. Nehorayoff "is rehabilitated in that he now fully understands that thorough record keeping and assessment and follow up are absolute essentials of a physician's responsibilities to his patients (sic) It is therefore my opinion that it would not be contrary to the public interest for him to return to practice with supervision initially to insure that he is adequately discharging these responsibilities."

The consultant concluded his report by stating "... it is my opinion that the applicant is fit to return to the practice of medicine subject to the probation terms detailed herein."

A subcommittee of the State Board of Medicine reviewed the consultant's report and gave a recommendation unanimously supporting the consultant's conclusions and recommendation.

The Committee on the Professions after reviewing the entire record including the recommendation of the Peer Review Panel, the expert consultant's report, the subpanel of the State Board of Medicine's evaluation of the consultant's report, and the personal

meeting with Dr. Nehorayoff, was still troubled by the gravity of the original misconduct relating to the performance of abortions. The Committee also noted that the expert consultant did preface his report with the following:

Subject to the obvious limitation of not being able to observe Dr. Nehorayoff perform any procedures, I attempted to assess his competency, overall fund of knowledge in obstetrics and gynecology, and whether his knowledge was up-to-date.

In addition, the Consultant consistently referenced that Dr. Nehorayoff's return to practice would be while on probation and under the supervision of a physician Board Certified in Obstetrics and Gynecology.

In view of the totality of the circumstances surrounding this petition, the Committee, could not reach a unanimous recommendation. Two members of the Committee on the Professions voted to support the basic recommendation of the Peer Review Panel with additional safeguards for public protection to permit Dr. Nehorayoff's return to practice.

For the concerns expressed earlier in this report one member of the Committee voted to deny the petition.

The majority of the Committee voted to recommend to the Board of Regents that:

- 1) The revocation of Dr. Nehorayoff's license to practice medicine be stayed and that he be placed on probation for ten (10) years.
- 2) The probationary terms recommended by the Peer Review Panel be accepted and supplemented to include:
 - a) For the first five years of probation Dr. Nehorayoff's practice be restricted to a hospital setting.
 - b) as a condition of continuing on probation by the end of the second year of probation, Dr. Nehorayoff must have achieved Recertification in the specialty of Obstetrics and Gynecology. If Dr. Nehorayoff fails to obtain this recertification within the first two years of probation the Director of the Office of Professional Medical Conduct may commence a violation of probation proceeding.

Johanna Duncan-Poitier, Chair

Joseph B. Porter

Frank Muñoz