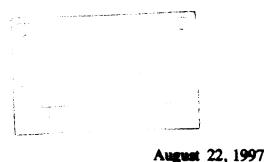


THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y 12230

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



Asmi L. Abdelmessih, Physician 2100 Donna Drive Vestal, New York 13850

Re: Application for Restoration

Dear Dr. Abdeimensik:

Enclosed please find the Commissioner's Order regarding Case No. 97-66-608 which is in reference to Calendar No. 0015919. 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: Kartin

Gustave Martine /

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cc: Jeffrey Berkowitz, Eaq. Nathan L. Dembin & Associates 225 Broadway Suite 1905 New York, New York 10007



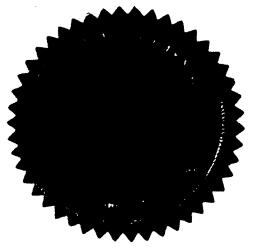
IN THE MATTER

of the

Application of ASMI L. ABDELMESSIH, for restoration of his license to practice as a physician in the State of New York Case No. 97-66-60R

It appearing that the license of ASMI L. ABDELMESSIH, 2100 Donna Drive, Vestal, New York 13850, to practice as a physician in the State of New York, was revoked by action of the Board of Regents on January 15, 1993, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with and accepted the recommendation of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on July 18, 1997, it is hereby

ORDERED that the petition for restoration of License No. 147792, authorizing ASMI L. ABDELMESSIH to practice as a physician in the State of New York, is denied, but that the execution of the revocation of said license, is stayed, and said ASMI L. ABDELMESSIH, is placed on probation for a period of five years, in accordance with the attached terms and conditions.



IN WITNESS WHEREOF, I, RICHARD H. CATE, Acting 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 1974 day of August, 1997.

Acting Commissioner of Education

Case No. 97-66-60R

It appearing that the license of ASMI L. ABDELMESSIH, 2100 Donna Drive, Vestal, New York 13850, to practice as a physician in the State of New York, having been revoked by action of the Board of Regents on January 15, 1993, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with and accepted the recommendation of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on July 18, 1997 it was

VOTED that the petition for restoration of License No. 147792, authorizing AZMI L. ABDELMESSIH, to practice as a physician in the State of New York, be denied, but that the execution of the revocation of said license be stayed and said AZMI L. ABDELMESSIH be placed on probation for a period of five years under the standard terms and conditions, with the added condition that his practice as a physician be limited to practice at an Article 28 facility, under the supervision of a physician who is board certified in obstetrics and gynecology.

<u>97-66-60R</u> March 19, 1997

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: Azmi L. Abdelmessih

Attorney: Jeffrey Berkowitz

Azmi Loca Abdelmessih, 2100 Donna Drive, Vestal, New York 13850, petitioned for restoration of his medical license. The chronology of events is as follows:

- 10/09/81 Issued license number 147792 to practice medicine in New York State.
- 06/20/91 Charged with professional misconduct by Department of Health. (See "Disciplinary History.")
- 12/23/92 Regents Review Committee recommended that license be revoked.
- 01/15/93 Board of Regents voted revecetion.
- 01/20/93 Commissioner's Order effective.
- 01/21/93 Temporary Restraining Order granted by Appellate Division of the Supreme Court of the State of New York.
- 03/28/93 Temporary Restraining Order vacated.
- 03/28/93 Revocation effective.

06/16/93 Applied to State Education Department for and reconsideration.

08/18/93

- 03/18/94 Board of Regents denied application for reconsideration.
- 03/23/94 Commissioner's Order effective.
- 06/02/94 Petition for restoration submitted.
- 03/08/96 Peer Panel restoration review.
- 10/14/96 Report and recommendation of Peer Review Panel. (See "Recommendation of the Peer Review Panel.")
- 03/19/97 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 June 20, 1991, the Department of Health charged Dr. Abdelmessih with professional misconduct and filed an Amended Statement of Charges on July 22, 1991. Dr. Abdelmessih was charged with willfully filing a false report, practicing the profession fraudulently, practicing the profession of medicine with negligence on more than one occasion, and moral unfitness to practice the profession.

On December 17, 1991, the Hearing Committee (Briber, Leppert, Chanatry) of the State Board for Professional Medical Conduct, Department of Health, found Dr. Abdelmessih guilty of willfully submitting a false report and, hence, committing fraudulent practice. In addition, the Hearing Committee found Dr. Abdelmessih guilty of eight counts of negligence based upon his significant lapses of judgment and recommended that his license be revoked.

On January 23, 1992, the Commissioner of Health, by designee, recommended that the Board of Regents accept the Findings of Fact, Conclusions, and Recommendation of the Nearing Committee. On December 23, 1992, the Regents Review Committee (Linton, Black,Rucker) recommended acceptance of the Findings of Fact and the additional Findings of Fact of the Mearing Committee and the Health Commissioner's designee; however, the Committee recommended that the Cunclusions be modified. The Regents Review Committee found Dr. Abdelmessik guilty of unprefersional conduct for willfully filing false reports and practicing the profession fraudulently, guilty of unprefessional conduct for conduct in the practice of the profession which evidenced moral unfitness to practice the profession, and guilty of negligence on more then one occasion. Purther, the Committee accepted the recommendation of the Hearing Coumittee and the Neelth Commissioner's designee to revoke Dr. Abdelmessih's license upon each specification of the charges of which he was found guilty. On January 15, 1993, the Board of Regents voted to revoke Dr. Abdelmeesih's license and the Commissioner's Order became effective on January 20, 1993. Based on an Article 78 proceeding, the court granted a temporary stay on January 21, 1993. The temporary stay was vacated, and the revocation became effective on March 28, 1993.

By letters dated June 16, 1993 and August 18, 1993. Dr. Abdelmessih applied for reconsideration of the prior determination and reversal of the imposed revocation. The Executive Director of the Office of Professional Discipline decided that Dr. Abdelmessih's application for reconsideration warranted referral to the Board of Regents for its determination. Om February 21, 1994, the Regents Review Committee (Linton, Black, Rucker) determined that Dr. Abdelmessih had not met the criteria for reconsideration, and recommended that his application for reconsideration be denied. On March 18, 1994, the Board of Regents voted to deny the application for reconsideration and the Commissioner's Order became effective March 23, 1994.

Dr. Abdelmessih submitted his petition for restoration on June 2, 1994. In its letter of September 21, 1994 to the State Education Department, the Office of Professional Medical Conduct stated it was not convinced that Dr. Abdelmessih is remorseful of the risks he placed on his patients by his practice of medicine and recommended that his medical license not be restored.

Recommendation of the Peer Review Panel. (See attached report of the Peer Review Panel.) The Peer Review Panel (Corbett, Hannan, Wu) convened on March 8, 1996. In its report dated October 14, 1996, the Panel recommended that Dr. Abdelmessih's petition for restoration be granted and his license to practice restored.

Recommendation of the Committee on the Prefessions. On March 19, 1997, the Committee on the Professions (Duncan-Poitier, Ahearn, Muñoz) met with Dr. Azmi L. Abdelmessih to consider his petition for the restoration of his license as a physician in New York State. Dr. Abdelmessih was accompanied by his attorney, Mr. Jeffrey Berkowitz. Dr. Abdelmessih brought with him books and other educational materials in the field of medicine which he told the Committee he had studied. He also presented the Committee with documentation of additional continuing education study in medicine.

The Committee asked Dr. Abdelmessih to discuss the events that led to the less of his license. He said that when he applied for hospital privileges in New York State he failed to mention on the applications that he had lost his privileges at a West Virginia hospital. Dr. Abdelmessih told the Committee that he realises he was not forthcoming in his applications regarding the loss of hospital privileges. He stated that "I was under stress, and when you're under stress, you miss some things."

The Counittee asked him to explain what happened in West Virginia. Dr. Abdelmessih said that he worked for 14 years in that state at two hospitals, 10 miles apart. He reported that, in 1981, operating personnel complained he was semually harassing them after he was "a little rough" with one acting head nurse who was collecting contributions for another nurse in the operating room. The next day, he said, she typed up a complaint, got others to sign it, and soon afterward the hospital asked him to resign. Dr. Abdelmessih reported that he refused, and the hospital revoked his privileges. He said that he sued the hospital and was vindicated in 1987 when he received summary judgment and the hospital was found liable for damages. The Counittee asked Dr. Abdelmessih and Mr. Berkowitz if they could obtain and provide the Counittee with a copy of the summary judgment. Mr. Berkowitz replied that they would make every attempt to do so if they could locate the appropriate parties in West Virginia.

Dr. Abdelmessih indicated that he applied for hospital privileges in Lourdes Hospital in Binghamton and at United Health Services (UNS) in Johnson City in 1985. He said that he resigned at Lourdes to concentrate at UNS. In September 1987, according to Dr. Abdelmessih, UNS asked him to resign because of the false information they discovered, but said that he should reapply. He told the Committee that he was led to believe his hospital privileges would be restored within a short time period and that was why he continued with his private practice. Dr. Abdelmessih said that he had poor legal advice during that six-month period and did not adequately inform his patients that he did not have hospital privileges. He indicated that from February 1988 until December 1991 he posted signs stating "Office Practice Only" in his reception area, hallway, and laboratory area. Dr. Abdelmessih said that it was difficult and not wise to practice obstetrics and gynecology without hospital privileges since you never knew when a patient was ready to deliver and the patient might need surgery that couldn't be performed in the office. When asked by the Committee why he made that decision to practice anyway, Dr. Abdelmessih responded that he had to make a living since he had two children in college and one in high school. Dr. Abdelmessih indicated that with his background, he didn't know what to do and relied on his lawyer. He stated that he did not intend to deceive anyone, and his actions were not done with malice. He said that obstetrics and gynecology were his life and that it was a wonderful thing when he delivered a baby.

The Committee asked about his actions with three patients mentioned in the original statement of charges. Regarding the first patient, Dr. Abdelmoosih said that he told har he would be doing a dilation and curettage, but described it as "not a big deal, like a biopsy." He indicated that he didn't know a written consent was necessary. Regarding the infertility patient, Dr. Abdelmessih reported that he had previously delivered one of her bebies. He said that he did not have ultressund equipment in his office and missed the fact that she was carrying twins. He told the Committee that she was evere another doctor would be delivering, but she called him when she was emperioncing pressure pains. Dr. Abdelmessih reported that he advised her to come to his office, but she went to a hospital and delivered. Regarding the last patient, Dr. Abdelmossih indicated that he was treating her for a thyroid condition and had put her on estrogen. He said that he performed a dilation and curettage on her in his office to stop her profuse bleeding and that there were no complications.

Dr. Abdelmessih told the Committee that he would like to practice obstetrics and gynecology in Gouverneur if his license were restored. He said that during 1991-93 he had worked at E.J. Moble Nospital in Gouverneur and performed more than 200 deliveries and procedures with no problems. He reported that his competency was never really in question. Dr. Abdelmessih told the Committee that he would not practice in obstetrics and gynecology, however, if he could not obtain hospital privileges. He indicated that he has taken continuing medical education courses, maintains his membership in a number of professional associations, has attended grand rounds, and subscribes to many professional journals.

In response to the Committee's request, Mr. Berkowitz forwarded two communications from Mr. Elba Gillenwater, the attorney who represented Ohio Valley Medical Center in Dr. Abdelmessih's civil suit against them. Additionally, the committee received from the Office of Professional Discipline, a portion of the Decision and Order entered on the 22nd day of March, 1985, in the Circuit Court of Ohio County, West Virginia, which was entered into evidence in the proceedings of the State Board for Professional Medical Conduct of the New York State Department of Health. Mr. Gillenwater states that Dr. Abdelmessih's privileges were terminated at Ohio Valley Medical Center as a result of a complaint alleging mistreatment of the operating room personnel. Further, Mr. Gillenwater indicates that Dr. Abdelmessih filed suit against the hospital, seeking reinstatement of his privileges and damages, and was granted summary judgment by the Circuit Court on the question of liability.

The Committee, on the Professions CONCUTS with the recommendation of the Peer Review Panel "that the applicant has more than adequately fulfilled the criteria necessary to warrant the restoration of his license to practice medicine in the State of New York." The Committee agrees with the observation of the Peer Review Panel that Dr. Abdelmessih has kept abreast of the profession and has demonstrated sufficient remorse ever his actions. However, the Committee does not agree that it necessarily follows that no restrictions should be placed on his return to practice. Dr. Abdelmassih made a number of decisions which raise questions as to his professional judgment. As a result of these judgments, he secrificed petient core. The Consittee believes the public would be best served if restrictions were imposed upon Dr. Abdelmessih as he begins to practice obstetrics and gynecology once again.

Therefore, after a complete review of the record, including Dr. Abdelmessih's personal interview with the Committee on the Professions, the Committee voted unanimously to recommend to the Board of Regents that the revocation of Dr. Abdelmessih's license to practice as a physician in New York State he stayed, and that he be placed on probation for five years under the standard terms of probation with the added stigulation that his practice he restricted to an Article 28 facility and be under the supervision of a physician board certified in Obstatrice and Gynecology, said supervising physician and said setting to be selected by the applicant and previously approved, in writing, by the Director of the office of Professional Redicel Condust. The terms of probation are attached hereto, made a part hereof and marked as "Rhibit A." Additionally, the Committee voted unanimously to recommend to the Board of Regents that, upon successful completion of the period of probation, the applicant's license to practice medicine in the State of New York be fully restored.

Johanna Duncan-Poitier, Chair

Kathy A. Ahearn

Frank Muflos

Exhibit "A"

TERMS OF PROBATION OF THE COMMITTEE ON THE PROFESSIONS ANMENDED BY BOARD OF REGENTS

ASMI L. ABDELMESSIE

- 1. That applicant shall make quarterly visits to an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health, unless said employee agrees otherwise as to said visits, for the purpose of determining whether applicant is in compliance with the following:
 - a. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
 - b. That applicant shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234 of any employment and/or prectice, applicant's residence, telephone number, or neiling address, and of any change in applicant's employment, prectice, residence, telephone number, or mailing address within or without the State of New York;
 - c. 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 foos dae and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by BPLS is regard to said registration fees, said proof from DPLS to be submitted by applicant to the New York State Department of Neelth, addressed to the Director, Office of Professional Nedical Conduct, as aferenaid, no later than the first three months of the period of probation; and
 - d. That applicant shall submit written proof to the New York State Department of Health; addressed to the Directer, Office of Professional Medical Conduct, as aforesaid, that 1) applicant is currently registered with the MYSHD, unless applicant submits written proof to the New York State Department of Health, that applicant has advised DPLS, MYSHD, 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; said proof of the above to be submitted no later than the first two months of the period of probation; and
 - e. That applicant shall only practice as a physician at an Article 28 facility under the supervision of a physician board certified in obstetrics and gynecology, said

supervising physician and said setting to be selected by applicant and previously approved, in writing, by the Director of the Office of Professional Medical Conduct. Said Supervision shall include the random selections and review by said supervisor of applicant's patients records, office records and hospital charts in regard to applicant's practice and applicant shall also be required to make such records available to said supervisor at any time requested by said supervisor and that said supervisor shall submit a report, once every six months, regarding the above-mentioned supervision of applicant's practice to the Director of the Office of Professional Medical Conduct.

 If the Director of the Office of Professional Medical Conduct determines that applicant may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Reles of the Beard of Regents.