

Public

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The University of the State of New York
Education Department



IN THE MATTER

of the

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

Case No. 96-93-60R

It appearing that the license of FRED G. CONSTANT, REDACTED
to practice as a physician in the State of New York, was
revoked by action of the Board of Regents on October 19, 1990, and he having petitioned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 Review Panel and the Committee on the Professions, now, pursuant to action
taken by the Board of Regents on June 14, 1996, it is hereby

ORDERED that the petition for restoration of License No. 123445,
authorizing FRED G. CONSTANT 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 10th day
of July, 1996.

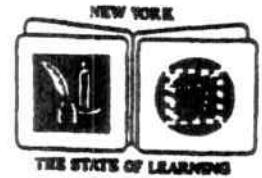
REDACTED

/ Commissioner of Education

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consideration to said petition, and having agreed with and accepted the recommendations
of the Peer Review Panel and the Committee on the Professions, now, pursuant to action
taken by the Board of Regents on June 14, 1996 it was

VOTED that the petition for restoration of License No. 123445, authorizing
FRED G. CONSTANT to practice as a physician in the State of New York, be denied.



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

ASSOCIATE COMMISSIONER FOR THE PROFESSIONS
OFFICE OF THE PROFESSIONS

May 24, 1996

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,
Kathy A. Ahearn, Zelda Holcomb) Regarding the Petition of Fred G.
Constant 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 Fred G. Constant. 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 deny the petition for restoration of the medical license of Fred G. Constant.

Respectfully submitted,

REDACTED

Johanna Duncan-Poitier
Acting Associate Commissioner

Approved:

Commissioner of Education

Date

96-93-60R
March 14, 1996

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: Fred G. Constant

Attorney: George K---

Fred G. Constant, REDACTED
---, petitioned for restoration of his medical license. The
chronology of events is as follows:

- 03/26/75 Issued license number 123445 to practice as a
physician in New York State.
- 05/30/89 Charged with professional misconduct by Department
of Health. (See "Disciplinary History.")
- 09/17/90 Regents Review Committee recommended that license
be revoked.
- 10/19/90 Board of Regents voted revocation.
- 11/05/90 Commissioner's Order effective.
- 09/26/92 Petition for restoration submitted.
- 12/02/94 Peer Panel restoration review.
- 04/17/95 Recommendation of Peer Review Panel. (See
"Recommendation of the Peer Review Panel.")
- 03/14/96 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 May 30, 1989, the Department of Health
charged Dr. Constant with eight specifications of professional
misconduct. Dr. Constant was charged with practicing the
profession while the ability to practice was impaired by mental
disability, practicing with negligence on more than one occasion,
practicing with incompetence on more than one occasion, and with
committing unprofessional conduct. On April 23, 1990, the Hearing
Committee (Buchanan, Foster, O'Hare) of the State Board for
Professional Medical Conduct issued its report and recommended that
Dr. Constant's license be revoked. On June 1, 1990, the

Commissioner of Health recommended that the findings of fact, conclusions, and recommendation of the Hearing Committee be accepted. On September 17, 1990, the Regents Review Committee (Batista, Evans, Postal) recommended Dr. Constant be found guilty, wholly or in part, of each of the specifications of professional misconduct. The Regents Review Committee recommended that the findings of fact and the conclusions of the Hearing Committee and the Commissioner of Health be modified, but also recommended that Dr. Constant's license be revoked. On October 19, 1990, the Board of Regents voted to accept the recommendations of the Regents Review Committee. The Commissioner's Order became effective on November 5, 1990.

Recommendation of the Peer Review Panel. (See attached report of the Peer Review Panel.) The Peer Review Panel (Diamond, Lowinson, Santiago) met on December 2, 1994. In its report dated April 17, 1995, the Panel recommended that Dr. Constant's petition for restoration of his medical license be denied.

Recommendation of the Committee on the Professions. On March 14, 1996, the Committee on the Professions (Ahearn, Duncan-Poitier, Holcomb) reviewed the petition of Dr. Fred Constant for the restoration of his license as a physician. Dr. Constant appeared personally and was represented by his attorney, Mr. George Karp, and accompanied by his father as an observer in this meeting.

Dr. Constant opened the meeting by explaining what had occurred when he lost his license. Dr. Constant stated he had committed an error while practicing medicine at Manhattan Psychiatric Center. He explained that he was contacted by staff of the Department of Health and asked to come in for an interview. Dr. Constant stated that he had explained his reasons for his actions in treating the patient in question. He further explained that the Department of Health asked to see further records of his practice and he provided approximately 25 files. Dr. Constant stated that the Department of Health took five of the files where they believed there were some discrepancies and/or poor judgment on his part.

Dr. Constant explained that at the disciplinary hearing he represented himself because he could not afford a lawyer. His license was subsequently revoked for practicing while his judgment was impaired, for negligence, and incompetence. Dr. Constant then stated that he was not seeing his psychiatrist for a period of time and he became paranoid and psychotic, resulting in his admission to Creedmoor Psychiatric Center. He explained to the Committee that he stayed as an in-patient at Creedmoor for approximately eight months and was then discharged and followed by Creedmoor staff from 1991-1993.

He said that he asked the psychiatrist at Creedmoor to provide a statement that he was now sufficiently recovered to return to the practice of medicine. He explained that the Creedmoor psychiatrist was not willing to provide such a statement. The record reflects a May 10, 1993 letter from Creedmoor Psychiatric Center which stated that "providing a statement with the terms indicated, would badly damage our therapeutic relationship with Dr. Fred Constant." Dr. Constant further explained that it was at this point in time he returned to Dr. Gruen who previously had treated him for psychiatric disorder. Dr. Constant explained that he saw Dr. Gruen for approximately four months in 1994 and continues under his treatment through March 1996.

Dr. Constant proceeded to discuss the recommendation of the Peer Review Panel that his license not be restored. He explained that the Peer Panel criticized him for not acknowledging his errors, and he felt the lack of a positive recommendation from the Creedmoor Psychiatric Center staff and the fact that his petition for restoration was opposed by the Office of Professional Medical Conduct also affected their decision.

Dr. Constant then stated that he wanted his license restored because of the financial hardship of his current situation, and he believed that if he was given close supervision and certain limitations of practice that he could practice effectively. The Committee inquired why Dr. Constant felt he needed to be supervised. Dr. Constant replied that he had committed grave errors, must make amends, and that he was not sure that his ability to practice medicine was "up to par".

Dr. Constant then described that when he did not take his medications in the past, he suffered from hallucinations and was not capable of treating patients. He stated that he had difficulty asking patients questions and some difficulty in grasping what the patient was saying to him. This resulted in his having to ask questions many times to understand and get a diagnosis in his mind and then, unfortunately, he failed to write the diagnosis down in the patient's record. Dr. Constant asserted that when off his medication he did not always experience hallucinations. The Committee inquired how they would know that Dr. Constant would not fail to take his medications in the future. Dr. Constant responded that he had been taking his medications every day, and he hasn't missed any medications since 1991.

The Committee also inquired what Dr. Constant had been doing to support himself since he had not been able to work as a physician. Dr. Constant replied that he had been unemployed. He asserted that he had offered to do physicals and medical histories for an insurance company; however, the person he had been dealing with never got back to him. Dr. Constant stated that he had applied for disability while at Creedmoor Psychiatric Center. However, Dr. Constant maintained that he was currently able to work as a physician.

In concluding the meeting with the Committee on the Professions, Dr. Constant's attorney, Mr. Karp, stated that his client had somewhat of a language problem and experienced difficulty in expressing himself during the meeting. Mr. Karp said that Dr. Constant had no problem with any restrictions that the Committee or the Board of Regents would impose as a condition to the restoration of Dr. Constant's license to assure that there is no risk to the public; Dr. Constant himself had suggested the possibility of supervision because of his history of psychiatric problems. He asserted that Dr. Constant believes that he can function as a physician and serve the community that he previously treated. Mr. Karp stressed that the concern the Peer Panel expressed regarding possible evidence of brain atrophy was unwarranted as evidenced by the MRI performed, which showed normal results. In addition, he stressed that Dr. Gruen had provided a statement on behalf of Dr. Constant indicating his stability without any psychiatric symptoms. Mr. Karp also took issue with the Peer Panel's conclusion that Dr. Constant is not receiving proper treatment. He referred to Dr. Gruen's credentials and ability as a psychiatrist and stated that the record doesn't support the Peer Panel's conclusion that Dr. Constant has not been receiving proper treatment. Mr. Karp then asked, if the Committee on the Professions did not agree that Dr. Constant's petition should be granted, that the petition be sent back to the Peer Review Panel as their findings were not supported by the record.

The overarching concern in all restoration cases is the protection of the public. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that restoration of a license should be granted in the face of misconduct that resulted in the loss of licensure. There must be a clear preponderance of evidence that the misconduct will not recur and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner.

The Committee on the Professions, after reviewing the entire record and considering its meeting with Dr. Constant on March 14, 1996, concurs with the unanimous recommendation of the Peer Review Panel that Dr. Constant is not yet ready for the return to the profession of medicine. Even in Dr. Constant's presentation to the Committee on the Professions he conceded that he did not believe he was currently "up to par" and ready to practice without supervision.

The Committee concurred with the Peer Review Panel's finding that Dr. Constant does not fully understand the extent to which his illness may have jeopardized the care of his patients, and his responsibility for the charges of negligence and incompetence that were sustained against him. The practice of medicine is frequently a matter of life and death which may involve high stress and pressure on any practicing physician. The Committee does not believe that this record supports a conclusion that Dr. Constant would be ready for such responsibilities at the present time.

Accordingly, after a complete review of the record, the Committee on the Professions voted unanimously to support the recommendation of the Peer Review Panel that Dr. Constant's petition for the restoration of his license as a physician in New York be denied at this time.