

  
Dev Gnanadev, M.D., Chair  
Panel B

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Termination  
of Probation Regarding:

HARI REDDY, M.D.

Physician's and Surgeon's Certificate Number  
A 56371,

Petitioner.

Case No. 800-2014-009304

OAH No. 2015020256

**PROPOSED DECISION**

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Diego, California on May 18, 2015.

Deputy Attorney General Joseph McKenna III, Department of Justice, State of California, represented the Office of the Attorney General, as authorized by Government Code section 11522.

Benjamin J. Fenton, Esq. represented petitioner, Hari Reddy, M.D. Petitioner was present throughout the petition proceedings.

The matter was submitted on May 18, 2015.

**FACTUAL FINDINGS**

1. On October 16, 1996, Physician's and Surgeon's Certificate number A 56371, was issued to petitioner.

2. On April 15, 2002, in the Superior Court, County of San Bernardino, case number FVI-011374, petitioner pled nolo contendere and was convicted of one count of violating California Penal Code section 242 (battery), a misdemeanor. The battery conviction resulted from petitioner having engaged in acts of sexual misconduct with a female patient.

3. On March 27, 2001, an accusation, case number 11-1999-101469, was filed against petitioner. The accusation was amended twice. The Second Amended Accusation, dated July 15, 2002, alleged the following: on April 15, 2002, petitioner was convicted of a criminal offense substantially related to the qualifications, functions and duties of a physician and surgeon; and, from 1997 until 1999, petitioner engaged in instances of general unprofessional conduct and sexual misconduct with five female patients who ranged in age from 15 to 38 years old.

4. A hearing on the Second Amended Accusation was held on December 17 and 18, 2002, and March 4, 2003. The Administrative Law Judge (ALJ) who presided over the hearing found that petitioner sexually abused four female patients on numerous occasions over a three-year period of time; and he suffered a substantially related criminal conviction based on his sexual misconduct with one of the patients, who was 15 years old at the time of the sexual misconduct. Accordingly, the ALJ ordered that petitioner's license be revoked.

5. On April 24, 2003, the board adopted the ALJ's order of revocation and petitioner's license was revoked, effective May 23, 2003.

6. On May 31, 2006, petitioner signed, and thereafter submitted to the board, a Petition for Reinstatement of his revoked license. The petition was heard on November 1 and 2, 2007, and January 3, 2008. On January 14, 2008, the ALJ who presided over the hearing recommended that petitioner's petition be denied. The recommendation was based on the following observations and conclusions:

Petitioner had not sustained his burden of proof by the required standard. The sexual misconduct and unprofessional conduct for which petitioner's license was revoked, although occurring about nine years ago, were serious violations of petitioner's duties toward his patients and his profession. Petitioner denied the nature, import and effect of these acts for more than eight years and has only recently acknowledged any wrongdoing. He is beginning to demonstrate insight into the circumstances that led to the revocation of his license, and is beginning to understand, and take responsibility for, his actions, as well as expressing appropriate and sincere remorse and empathy for his victims.

It is commendable that petitioner reached this point with benefit of some psychological counseling and coursework in proper professional boundaries. However, his recent acceptance must be viewed against the backdrop of a period of eight years or so during which he continued to deny any wrongdoing. Further, as petitioner himself repeatedly acknowledged, rehabilitation can

be a long, slow and gradual process. What is lacking is convincing evidence that petitioner's recent revelations are sufficient to establish rehabilitation to the extent that re-licensure is appropriate at this time. All of the supporting evidence should be viewed in light of when petitioner experienced his breakthrough, in February and March 2007. . . . (Exh. 5)

On January 24, 2008, the board adopted the ALJ's Proposed Decision and the decision, denying petitioner's petition, became effective on February 25, 2008.

7. On May 17, 2010, petitioner signed, and thereafter submitted to the board, a second Petition for Reinstatement of his revoked license. The petition was heard by an ALJ on July 21 and 22, 2011. The Proposed Decision issued by the ALJ was submitted to panel B of the board on August 5, 2011. The board declined to adopt the Proposed Decision. After hearing oral argument and considering the record and written briefs filed by the parties, the board reinstated Certificate Number A 56371, revoked the reinstated certificate, stayed the revocation, and placed petitioner on probation for seven years on terms and conditions designed to protect the public while allowing petitioner to continue his rehabilitation. More specifically, the board concluded as follows:

. . . it is determined that petitioner has proven by clear and convincing evidence that he has made substantial progress toward rehabilitation and that it would not be against the public interest for him to hold a probationary license subject to appropriate conditions.

. . . The public interest requires that the conditions of probation include the board's standard conditions and optional conditions as follows: A professional boundaries program, and evaluation of his clinical competency, an ethics course, a practice monitor, an oral or written examination, a psychiatric evaluation, and a third party chaperone.

[¶] . . . [¶]

Since petitioner has not practiced medicine for approximately nine years, the board believes that a clinical evaluation and an examination are required to ensure current competence to practice medicine. Continuing medical education credits are not a substitute for a clinical evaluation and examination.

The board also believes that, given the nature and severity of petitioner's misconduct, an ethics course would provide an important component of public protection.

The board believes that completion of a professional boundaries course must be a requirement of probation since such a course is more appropriate now that petitioner is about to re-enter medical practice. The course previously taken by petitioner shall not be used as compliance with the professional boundaries course requirement. (Exh. 5, AGO 056-057)

Petitioner's seven years of probation commenced on March 23, 2012.

8. On October 16, 2014, petitioner signed, and thereafter submitted to the board, the instant Petition, seeking termination of his probation.

9. The documents included with petitioner's petition in conjunction with his testimony established that petitioner is currently in compliance with all the terms and conditions of his probation. The evidence established the following:

I [petitioner] have completed a professional boundaries course, an IMQ Professionalism (Ethics) Course, and passed a psychiatric evaluation by a Board approved expert. Clinically, I passed the Special Purpose Examination (SPEX) and the Physician Assessment and Clinical Education Program at PACE in San Diego. After successfully completing PACE, the program suggested that I complete the Mayo Clinic's Annual Family Medicine/Internal Medicine Update, which I eagerly did. That annual update included 24 hours of continuing medical education. Attached to my petition is a certification of completion from the PACE Professional Boundaries Program, the IMQ Professionalism Course, and the Mayo Clinic continuing education program.

I also regularly meet with my physician monitor, Le Roy Pascal, M.D. I am also in compliance with the requirement that I have a 3rd party chaperone present whenever I consult, examine or treat a female patient. Of course, I take this restriction very seriously, and comply with it closely. I am attaching letters of support from both Dr. Pascal and my chaperone, Diane McCaslin.

Since my reinstatement, I have also taken a number of other CME courses, including courses from Harvard Medical School. I am attaching with this Petition my continuing education certificates which I have taken since being reinstated. In

November 2012, I also became an ACLS Provider with the American Heart Association. I currently maintain that certification. (Exh. 1, AGO-006)

10. Petitioner's testimony and the exhibits included with his petition established that he addressed all of the concerns raised by panel B of the board in 2011 (Finding 7, above).

### LEGAL CONCLUSIONS

1. California Code of Regulations, title 16, section 1360.2, provides in part:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration . . . .
- (c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

[¶] . . . [¶]

- (e) Evidence, if any, of rehabilitation submitted by the applicant.

2. In a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored, and not on the board to prove to the contrary. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315; *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

3. A person seeking reinstatement must adduce stronger proof of his present honesty and integrity than one seeking admission the first time. He must show by the most clear and convincing evidence that efforts made towards rehabilitation have been successful. (*In re Menna* (1995) 11 Cal.4th 975, 986.)

4. Business and Professions Code section 2229 provides in part:

(a) Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence.

(c) . . . Where rehabilitation and protection are inconsistent, protection shall be paramount.

5. Rehabilitation is a “state of mind.” The law looks with favor upon rewarding with the opportunity to serve, one who has achieved “reformation and regeneration.” (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.)

6. Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when an applicant for readmission to a professional practice can demonstrate by sustained conduct over an extended period of time that he or she is once again fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

### *Analysis*

7. The evidence established that petitioner addressed the concerns raised by panel B of the board in 2011. The facts that gave rise to the initial action against petitioner’s license were particularly egregious. Petitioner committed acts involving sexual misconduct with female patients, one of whom was a minor. Consequently, public protection requires that petitioner continue to have a third party chaperone present while consulting, examining, or treating female patients. It would not, however, be against the public interest to modify petitioner’s probation.

## ORDER

The application of petitioner, Hari Reddy, M.D., for termination of probation is denied; however, the terms and conditions of his probation are modified and petitioner shall continue his probation under the following terms and conditions:

### **1. Third Party Chaperone**

During probation, petitioner shall have a third party chaperone present while consulting, examining or treating female patients. Petitioner shall, within 30 calendar days of the effective date of this decision, submit to the board or its designee for prior approval name(s) of persons who will act as the third party chaperone.

If petitioner fails to obtain approval of a third party chaperone within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a chaperone is approved to provide monitoring responsibility.

Each third party chaperone shall sign (in ink or electronically) and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the decision(s) and the accusation(s), and fully understand the role of the third party chaperone.

Petitioner shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient initials, address and telephone number; 2) medical record number; and 3) date of service. Petitioner shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log or to make the log available for immediate inspection and copying on the premises is a violation of probation.

Petitioner is prohibited from terminating employment of a board-approved third party chaperone solely because that person provided information as required to the board or its designee.

If the third party chaperone resigns or is no longer available, petitioner shall, within 5 calendar days of such resignation or unavailability, submit to the board or its designee, for prior approval, the name of the person(s) who will act as the third party chaperone. If petitioner fails to obtain approval of a replacement chaperone within 60 calendar days of the resignation or unavailability of the chaperone, petitioner shall receive a notification from the board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall cease the practice of medicine until a replacement chaperone is approved and assumes monitoring responsibility.

## **2. Notification**

Within seven (7) days of the effective date of this Decision, petitioner shall provide a true copy of this Decision to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility



where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

### **3. Supervision of Physician Assistants**

During probation, petitioner is prohibited from supervising physician assistants.

### **4. Obey All Laws**

Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

### **5. Quarterly Declarations**

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the board, stating whether there has been compliance with all the conditions of probation. Petitioner shall submit the quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

### **6. General Probation Requirements**

#### Compliance with Probation Unit

Petitioner shall comply with the board's probation unit and all terms and conditions of this Decision.

#### Address Changes

Petitioner shall, at all times, keep the board informed of petitioner's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

#### Place of Practice

Petitioner shall not engage in the practice of medicine in petitioner's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

#### License Renewal

Petitioner shall maintain a current and renewed California physician's and surgeon's license.

#### Travel or Residence Outside California

Petitioner shall immediately inform the board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event petitioner should leave the State of California to reside or to practice petitioner shall notify the board or its designee in writing 30 calendar days prior to the dates of departure and return.

### **7. Interview with the Board or its Designee**

Petitioner shall be available in person upon request for interviews either at petitioner's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

### **8. Non-practice While on Probation**

Petitioner shall notify the board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the board. All time spent in an intensive training program which has been approved by the board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event petitioner's period of non-practice while on probation exceeds 18 calendar months, petitioner shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Petitioner's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

## **9. Completion of Probation**

Petitioner shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's certificate shall be fully restored.

## **10. Violation of Probation**

Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

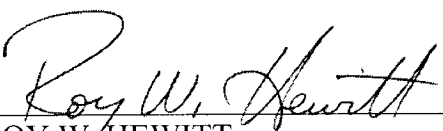
## **11. License Surrender**

Following the effective date of this Decision, if petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request to surrender his license. The board reserves the right to evaluate petitioner's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, petitioner shall within 15 calendar days deliver petitioner's wallet and wall certificate to the board or its designee and petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

## **12. Probation Monitoring Costs**

Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the board or its designee no later than January 31 of each calendar year.

DATED: June 12, 2015

  
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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings