

H

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation

Against:

NAGESH SHETTY, M.D.

**Physician's and Surgeon's
Certificate No. A 33495**

Respondent.

)
)
)
)
)
)
)
)
)
)
)

File No: 18-1998-86655

OAH No: L-1999010196

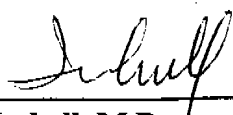
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Medical Board of California, Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on June 19, 2000.

DATED May 19, 2000.

**DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA**



**Ira Lubell, M.D.
Panel A, Chair
Division of Medical Quality**

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Nagesh Shetty, M.D.
1525 Mesaverde Dr. East, #115
Costa Mesa, CA 92626

Physician's and Surgeon's
Certificate No. A 33495

Respondent.

Case No. 18-98-86655

OAH No. L-1999010196

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on April 6, 2000.

Richard D. Hendlin, Deputy Attorney General, represented complainant Ron Joseph, Executive Director of the Medical Board of California.

There was no appearance by or on behalf of respondent Nagesh Shetty, M.D.

The matter was submitted on April 6, 2000.

FACTUAL FINDINGS

1. Complainant Ron Joseph filed Accusation number 18-98-86655, dated October 30, 1998, against Nagesh Shetty, M.D. (respondent) in his official capacity as the Executive Director, Medical Board of California (Board), Department of Consumer Affairs, State of California.

Effective October 15, 1999, Richard J. Behrens, Esq. (Behrens), notified the Office of Administrative Hearings and the Deputy Attorney General that he had been retained to represent respondent. On December 14, 1999, Stephen E. Hjelt (ALJ Hjelt), Administrative Law Judge, conducted a telephonic trial setting conference. The Deputy Attorney General and Behrens participated in this conference. Pursuant to the discussion during the conference, ALJ Hjelt issued an order, dated December 14, 1999, continuing the hearing to

April 6, 2000. The Third Amended Notice of Hearing, setting the hearing date for April 6, 2000, served on Behrens, respondent's attorney, complied with Government Code section 11509. There was no appearance by or on behalf of respondent.

2. On February 26, 1979, the Board issued Physician's and Surgeon's Certificate Number A 33495 to respondent. At all times relevant herein said license was in full force and effect and will expire on July 31, 2000, unless renewed

Pursuant to Business and Professions Code section 2236.1, on October 30, 1998, the Board automatically suspended respondent's physician's and surgeon's certificate.

3. A federal grand jury indicted and charged respondent with three counts of subscribing to false tax returns, in violation of Title 26, United States Code, section 7206(1). Following a jury trial, respondent was convicted on all counts. On October 15, 1996, respondent was sentenced, among other things, to serve twenty-one (21) months in the custody of the Attorney General's Bureau of Prisons, to pay a fine of \$40,000.00, and to serve one-year supervised release. Respondent appealed. The Ninth Circuit Court of Appeals affirmed his conviction and sentence.

4. The facts and circumstances surrounding the conviction are that he did not report substantial income on his federal tax returns for the years 1987, 1988 and 1989.

5. As set forth in Findings 3 and 4, respondent has been convicted of a crime that is substantially related to the qualifications, functions or duties of a physician and surgeon.

6. No evidence was offered to establish the following allegations:

- During the Internal Revenue Service investigation, respondent was notified of the commencement of the criminal investigation (it had been a civil audit up to that point) by letter dated December 3, 1991. On December 24, 1991, two hundred and eighty thousand dollars (\$280,000.00) (which had been withdrawn from accounts controlled by respondent and his wife) was wired to a bank in Switzerland.
- Respondent failed to report his indictment to the Board.
- Respondent failed to report his conviction to the Board.

7. As there was no appearance by or on behalf of respondent, he offered no evidence of mitigation or rehabilitation. Respondent did not establish that he is now rehabilitated at this time.

8. Pursuant to Business and Professions Code section 125.3, complainant seeks recovery of the costs of investigation and enforcement of the allegations set forth in the Accusation. In support of this request, complainant submitted two documents, "Certification of Prosecution Costs by Deputy Attorney General Richard D. Hendlin" and "Certification of Costs of Investigation and Enforcement."

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 2236(a), cause exists to discipline respondent's license in that he engaged in unprofessional conduct when he was convicted of a crime that is substantially related to the qualifications, functions or duties of a physician and surgeon by reason of Findings 3 and 4.

2. Cause does not exist to discipline respondent's license in that the evidence failed to establish that he violated Business and Professions Code section 802.1 by reason of Finding 5.

3. As set forth in Findings 3 and 4, respondent has been convicted of a crime that is substantially related to the qualifications, functions or duties of a physician and surgeon. Without evidence of mitigation and/or rehabilitation, it is not in the public interest to allow respondent to maintain his physician and surgeon certificate.

4. Business and Professions Code section 125.3(a) provides, in pertinent part:

(a) ...in any order issued in resolution of a disciplinary proceeding before any board within the department... the board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

As set forth in Finding 8, complainant seeks costs of investigation and enforcement of the charges alleged in the Accusation in this case. Complainant established that respondent committed the most significant, but not all of the violations alleged in the Accusation. Therefore, complainant is entitled to recover some, but not all, of the reasonable costs of investigation and enforcement.

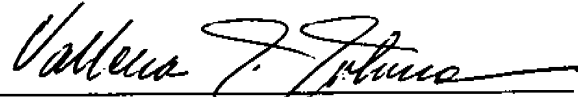
5. Cause exists to award costs of investigation and enforcement of the case in the amount of \$1,981.50, by reason of Findings 3, 4, 5, 6 and 8 and Legal Conclusions 1 and 3.

ORDER

1. Physician and Surgeon's Certificate number A 33495 issued to respondent Nagesh Shetty, M.D. is hereby revoked.

2. Respondent Nagesh Shetty, M.D. shall reimburse the Medical Board of California for its costs of investigation and enforcement in the amount of \$1,981.50.

DATED: April 24, 2000

A handwritten signature in cursive script, reading "Vallera J. Johnson", written over a horizontal line.

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings