

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

In the Matter of the Petition for
Reduction of Penalty of:

NAGESH SHETTY, M.D.

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

Respondent.

File No. 20-2005-165608

DECISION

The Proposed Decision of Alan R. Alvord, Administrative Law Judge, dated March 2, 2009, in San Diego, is attached hereto. Said decision is hereby amended, pursuant to Government Code Section 11517 (c)(2)(C) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. Page 1 - the heading of "Case No. 20-2008-189945" is stricken and replaced with "Case No. 20-2005-165608."

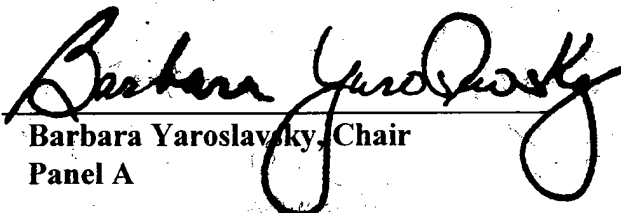
The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 8, 2009.

IT IS SO ORDERED April 8, 2009.

MEDICAL BOARD OF CALIFORNIA

By:


Barbara Yaroslavyk, Chair
Panel A

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

In the Matter of the Petition for Reduction of
Penalty of:

NAGESH SHETTY, M.D.,

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

Petitioner.

Case No. 20 2008 189945

OAH No. 2008120843

PROPOSED DECISION

Administrative Law Judge Alan R. Alvord, State of California, Office of
Administrative Hearings, heard this matter in San Diego, California, on February 17, 2009.

Robert J. Sullivan, Nossaman, LLP, represented petitioner Nagesh Shetty, M.D.

Alexandra M. Alvarez, Deputy Attorney General, Department of Justice, represented
the Attorney General's Office.

The matter was submitted on February 17, 2009.

FACTUAL FINDINGS

1. On February 17, 2009, the administrative record was opened and testimony
and documentary evidence were received.

2. On February 26, 1979, the Medical Board of California (the board) issued
Physician's and Surgeon's Certificate No. A 33495 to Nagesh Shetty, M.D. (petitioner or
Shetty). On October 30, 1998, the board's executive officer filed an accusation against
petitioner alleging grounds for discipline existed as a result of petitioner's 1998 criminal
conviction for tax fraud. That matter went to hearing on April 6, 2000. Shetty did not
appear at the hearing. On May 19, 2000, the board issued its decision revoking Shetty's
license, which became effective on June 19, 2000. In that case, the board found:

"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.

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.

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."

3. On April 5, 2005, Shetty filed a petition for reinstatement of his medical certificate. In his petition, Shetty disclosed that, in addition to the tax fraud conviction, he was convicted on December 7, 2000, on 26 counts of mail fraud. As a result of the two convictions, Shetty was sentenced to prison, was fined \$4,000 and was ordered to pay restitution in the total sum of \$47,260.55. He was released from prison after serving three and one-half years and was placed on three years' supervised release. On December 6, 2004, he completed his supervised release. Shetty has paid the fines and he is making restitution through a wage garnishment. Other consequences of his convictions include the revocations of his licenses to practice medicine in New York in 1999 and in Washington in 2001.

4. Shetty attended the petition hearing on July 20, 2005. On October 6, 2005, the board revoked his certificate and stayed the revocation and imposed seven years probation. Terms of probation included completion of a clinical training course, a prohibition against solo practice, completion of an ethics course, supervision by a practice monitor with quarterly reporting to the board, the completion of no less than 40 hours per year of continuing education in addition to the required continuing education, and providing a copy of the board's decision to any hospital where petitioner had staff privileges or membership as well as to any malpractice carrier providing coverage.

5. Shetty is making payments to the board for his probation costs. He completed a charting and medical record keeping course even though he was not required to do so as a condition of probation. He obtained continuing education courses totaling 646.5 hours through February 2009, well in excess of the 40 hours per year, he was required to take as a condition of probation. He has attended weekly cardiology conferences at Long Beach Memorial Hospital to remain current on issues in cardiology. Shetty has satisfied all the terms and conditions of his probation.

6. Shetty was born in 1945. He attended Karnatak College in Dharwar, India. He received a Bachelor of Medicine, Bachelor of Surgery from Karnatak University in 1968.

He worked as a District Family Planning Medical Officer for the Government of India in 1970. He did postgraduate work in medicine at Karnatak Medical College Hospital from 1970 to 1973. He served as a medical intern at Maimondes Medical Center in Brooklyn, NY, completed a residency in internal medicine at the V.A. Hospital in Brooklyn, NY, a fellowship in cardiology at Mt. Sinai Medical Center in Miami, FL, a senior residency in internal medicine at the V.A. Hospital in Dayton, OH, and a fellowship in cardiology at Good Samaritan Hospital and Wright State School of Medicine in Dayton, OH. He was certified by the American Board of Internal Medicine in 1981 and by the American Board of Subspecialty in Cardiovascular Diseases in 1987.

7. After his release from prison, Shetty worked as a courtesy clerk in a grocery store for three years. At the time of the hearing, he was working as a physician under the terms of his probation. His practice was limited to internal medicine and cardiology consultations with the Laser and Laparoscopic Institute of West Covina, a group practice.

8. Shetty offered many letters of support at the hearing from various practitioners who have known Shetty for a long time. They generally described him as a competent, hard working, caring, enthusiastic, outgoing, kind, respectful individual who communicated effectively with patients and families. Nothing suggested that Shetty was anything other than a competent physician.

9. Shetty testified at the hearing. He expressed genuine remorse and regret for his past conduct. He demonstrated a high degree of insight into the problems that led to the revocation of his license, and he has committed himself to making sure he does not repeat those mistakes again. He testified that his attempt to run the business side of his medical practice led to his tax and billing problems. He vowed to use tax and medical business management professionals in any future practice to ensure that he complies with all laws and regulations. He recognizes that as the physician, he is ultimately responsible for everything that takes place in his office. He showed a great deal of respect for the board's role in protecting public safety.

LEGAL CONCLUSIONS

1. Government Code section 11522 authorizes a person whose license has been disciplined to petition for reinstatement or reduction of the penalty. Business and Professions Code section 2307 authorizes a physician whose certificate has been disciplined to petition for reinstatement.

2. In a proceeding to restore a revoked license, the burden rests on the petitioner to prove that he has rehabilitated himself and is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) An individual seeking reinstatement must present strong proof of rehabilitation sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d. 308, 315-316; *In re Menna* (1995) 11 Cal.4th 975, 986.)

3. Public protection is the highest priority for the Medical Board and the administrative law judges who consider disciplinary cases. (Bus. & Prof. Code, § 2229.) The purpose of professional license discipline is not to punish the individual, but to protect the public. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

4. Title 16, California Code of Regulations, section 1360.2 provides:

“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 as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).

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

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.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) 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.)

6. Cases authorizing reinstatement of a professional practice on the basis of rehabilitation commonly involve a substantial period of exemplary conduct following the applicant’s misdeeds. The more serious the misconduct and the bad character evidence, the stronger the applicant’s showing of rehabilitation must be. In determining whether to grant

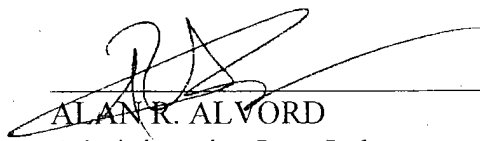
an application, the commonsense notion is rehabilitation cannot be determined separate and apart from the offenses from which one claims to be rehabilitated. (*In re Gossage* (2000) 23 Cal.4th 1080, 1098.)

7. Shetty was convicted of serious crimes in 1998 and 2000 arising out of misconduct occurring in 1987-89. More than 20 years have passed since the misconduct and almost ten years since the convictions. During that time, Shetty's has behaved in an exemplary fashion. He paid his debt to society in his criminal cases. He lived with a revoked license for five years and has practiced successfully under strict probationary restrictions for four years. The evidence established he is fully rehabilitated. Public protection no longer requires that he remain on probation.

ORDER

The petition of Nagesh Shetty, M.D., Physician's and Surgeon's Certificate No. A 33495 is granted. Nagesh Shetty, M.D.'s certificate shall be fully restored without conditions.

DATED: March 2, 2009


ALAN R. ALVORD
Administrative Law Judge
Office of Administrative Hearings