

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

In the Matter of the Petition for	)	
Reinstatement of Revoked	)	
Certificate of:	)	
	)	
MICHAEL M. KAMRAVA	)	Case No. 800-2014-008421
	)	
Physician's and Surgeon's	)	OAH No. 2015110968
Certificate No. G 41227	)	
	)	
Petitioner.	)	
_____	)	

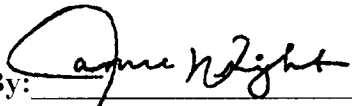
DECISION

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

This Decision shall become effective at 5:00 p.m. on October 28, 2016.

IT IS SO ORDERED September 28, 2016.

MEDICAL BOARD OF CALIFORNIA

By: 

Jamie Wright, JD, Chair
Panel A

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

In the Matter of the Petition for Reinstatement of
Revoked Certificate of:

MICHAEL M. KAMRAVA.

Petitioner.

Case No. 800-2014-008421

OAH Case No. 2015110968

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), heard this matter on July 27 and 28, 2016, in Los Angeles, California.

Sylvia Bedrossian, Attorney at Law, represented petitioner Michael M. Kamrava, who was present.

Christine R. Friar, Deputy Attorney General, and Judith T. Alvarado, Supervising Deputy Attorney General, appeared under Government Code section 11522.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 28, 2016.

FACTUAL FINDINGS

1. Petitioner filed a Petition for Penalty Relief, Reinstatement of Revoked/Suspended Certificate, on July 24, 2014 (Petition).

2. The Medical Board of California (Board) issued Physician and Surgeon's Certificate Number G 41227 to petitioner on November 26, 1979. On June 30, 2010, the Board's Executive Director filed a First Amended Accusation against petitioner, in Case Number 06-2009-197098, OAH Case Number 2010010877, alleging causes for discipline including repeated negligent acts, gross negligence, and maintaining inadequate records. An ALJ heard the matter in October and November 2010 and issued a proposed decision.

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3. The Board issued a Decision After Nonadoption (Decision) effective July 1, 2011, revoking petitioner's certificate.¹

4. The Decision recited that that petitioner obtained his medical degree from Case Western Reserve University School of Medicine in 1976. He completed an internship in obstetrics and gynecology at the University Hospitals of Cleveland in Ohio in 1977, and a residency in obstetrics and gynecology at the Mount Sinai Hospital of Cleveland in 1980. In 1982, petitioner completed a fellowship in reproductive endocrinology and infertility at Beth Israel Hospital through Harvard Medical School. From 1982 to the date of hearing in Case Number 06-2009-197098, petitioner engaged in private practice in endocrinology and infertility in Los Angeles; at the time of that hearing, petitioner was Director of West Coast IVF Clinic, Inc. in Beverly Hills. Since 1986, petitioner was also an attending physician in obstetrics and gynecology at Cedars Sinai Medical Center in Los Angeles.

5. The Decision recited that cause existed to discipline petitioner's certificate for gross negligence and for repeated negligent acts for performing an excessive number of embryo transfers in the case of patient N.S. on two occasions and in the case of patient L.C.; for repeated negligent acts for failing to perform testing on patient H.L. and for failing to refer her to a specialist to rule out cancer after obtaining abnormal cytology report findings; and for maintaining inadequate or inaccurate records for patient H.L.

6. With respect to the appropriate level of discipline, the Decision recited in its Legal Conclusions section that:

66. This is not a one patient case or a two patient case; it is a three patient case, and the established causes of discipline include repeated negligent acts (all three patients), gross negligence (two patients) and inadequate records (one patient). The Board is cognizant of [petitioner's] changes in his practice and his completion of professionalism and recordkeeping courses. However, whenever the Board exercises its disciplinary functions, public protection is paramount. (See Bus. & Prof. Code, § 2001.1.) The Board is not assured that oversight through probation is enough, and having weighed the above, has determined that revocation of [petitioner's] certificate is necessary to protect the public. (Ex. 7, p. 43.)

¹ On June 20, 2011, petitioner filed a petition for writ of mandate and request for stay in the Superior Court of California, County of Los Angeles. On January 9, 2012, six months after the 2011 Decision became effective, the petition for writ of mandate and request for stay was denied. (Ex. 5.)

7. Petitioner testified at the hearing of this matter that the Petition reflects his understanding of the reason his certificate was revoked. The Petition recites that “the evidence was flawed and [petitioner’s] due process was violated” in the 2010 license discipline hearing. The Petition challenges the expert testimony offered at the discipline hearing and recites that “[c]learly, the evidence was not enough to have [petitioner’s] license be revoked.” and that revocation was a violation of due process and equal protection. (Exs. 3, A.)

8. Despite challenging the legitimacy of the discipline imposed on his certificate, petitioner acknowledged that he erred in judgment in not following the American Society of Reproductive Medicine (ASRM) guidelines and that he transferred an excessive number of embryos into one of the patients in his care, which contributed to the loss of his certificate. To improve his judgment, petitioner testified, he has been thinking about his past practices, exercising, and taking continuing medical education courses. Petitioner’s certificate was disciplined in part due to his failure to discuss test results with one of his patients and refer her to an oncologist, a failure he attributed to being distracted by media attention. Petitioner testified that by working in a group practice he will be able to implement safeguards against such lapses, such as sending patients certified letters with any test results. Although petitioner was once a member of ASRM, he was expelled from that society in 2009 because he was thought to have exhibited behavior detrimental to the industry. He testified that, if his certificate is reinstated, he would change his procedures to comply with ASRM and other applicable guidelines and rules governing his practice. He would like to join a group practice to deliver gynecological and reproductive services and to perform in vitro fertilization procedures. He would also like to join a teaching hospital. He has no current offers from any group practice.

9. It has been over five years since the Board revoked petitioner’s certificate. Petitioner has attended numerous continuing education programs. Many of those courses relate to women’s health; many do not relate to the specialized area of practice petitioner would like to pursue if his petition is granted. He has taken courses in recordkeeping and medical ethics, and has attended weekly grand rounds at Cedars Sinai Medical Center. Petitioner has not taken any Physician Assessment and Clinical Education (PACE) courses. He has edited a textbook and contributed textbook chapters. He has written scholarly articles, all limited to the subjects of hysteroscopic endometrial embryo delivery (HEED) and sub-endometrial embryo delivery (SEED), though he has not conducted any research on those procedures since his certificate was revoked. Petitioner was cited by the Federal Drug Administration for his HEED and SEED trials. According to petitioner’s 2010 testimony, no other physician used the HEED and SEED procedures for embryo implantation. (Ex. 7, pp. 10-11.)

10. Petitioner has not been employed since his certificate was revoked. Although he testified that he works 24 hours per day, seven days per week, thinking about how to pay his former employees, he has done no actual work other than to file with the State of California paperwork necessary to maintain the corporate existence of his business, West Coast IVF Clinic, Inc. He has performed no community service over the past five years other than 36 hours of volunteer office work at his synagogue in the fall of 2015.

11. Petitioner wrote in his Petition that his certificate revocation has taken an “immense and unforgettable psychological and financial toll” on him, and that his family has also shared “this massive psychological and financial ordeal and trauma.” (Ex. 1, p. 5.) Nevertheless, petitioner has not sought or received any psychological therapy or counseling, testifying that “I didn’t need to.”

12. Petitioner presented character reference letters from Michael B. Kamiel, M.D., Lawrence D. Platt, M.D., and Rabbi David Shofet.

a. Dr. Kamiel, an endocrinologist, testified at hearing regarding petitioner’s character. Dr. Kamiel met petitioner approximately 20 years ago as a member of the Cross Town Endocrine Club in Los Angeles. Dr. Kamiel testified that he used to receive referrals of patients who had been treated by petitioner and who spoke highly of him. Dr. Kamiel wrote in his letter that petitioner is knowledgeable and conscientious and relates well to patients. Dr. Kamiel, who has never practice with petitioner, wrote and testified that petitioner was a “pioneer” in using HEED, a methodology he believes decreases risks and side effects of fertilization procedures; he knows of no peer-reviewed articles to support that statement, however. Dr. Kamiel has read neither the Decision revoking petitioner’s certificate nor the superior court judgment denying petitioner’s peremptory writ. Dr. Kamiel wrote in his letter that he is a “clinical endocrinologist with an interest in reproductive medicine.” (Ex. 1, p. 14), but conceded in testimony that he does not practice reproductive medicine, is not an expert in reproductive medicine, and does not perform in vitro fertilization procedures. Dr. Kamiel was paid \$1,250 to testify on petitioner’s behalf, not as an expert but as a character witness; this fact, as well as statements about petitioner’s practice and his own practice for which he could offer no support, and his lack of knowledge about the bases for petitioner’s certificate discipline, seriously undermine his credibility. His testimony and letter are given little weight.

b. Dr. Platt wrote that he realizes petitioner made decisions in the past that “have not been fully backed by standard clinical practice” Nevertheless, he believes petitioner “has learned a great deal from this traumatic experience. He has shown great remorse and has attempted to maintain his knowledge of medicine. Dr. Platt believes petitioner to be knowledgeable, conscientious, and capable of maintaining high standards. (Ex. 1, p. 12.)

c. Rabbi Shofet wrote that he has known petitioner since they were children together, that petitioner is a person of good character and is remorseful, and that petitioner needs reinstatement in order to be able to make reparations for his mistakes and to give more time to volunteer his services to help people in need. (Ex. C.)

13. Petitioner has not offered evidence sufficient to warrant granting his petition. He has failed to demonstrate that he is adequately rehabilitated professionally, ethically, and psychologically, and that he would not pose a threat to public safety should his certificate be reinstated. Petitioner contests that revocation of his certificate was appropriate, thereby establishing his failure to accept the Board’s findings, which would be the first step in the rehabilitative process. Petitioner would like to return to fertility therapy. He has submitted numerous certificates

showing he attended lectures, but did not establish that he has addressed the professional deficiencies for which his certificate was disciplined, other than recordkeeping. He has not worked in any medical office, even in a nonmedical capacity; indeed, he has not worked in any capacity in the past five years. Petitioner has written articles, but on HEED and SEED, methodologies for which he was criticized in the 2011 Decision. He wrote in his Petition of the immense psychological trauma his certificate revocation has caused him, yet he has not sought any counseling or therapy. Petitioner's testimony that he exercises regularly, attends continuing medical education lectures, and will follow the standards of his profession if reinstated, is insufficient to establish his rehabilitation and therefore warrant reinstatement.

LEGAL CONCLUSIONS

1. A person whose certificate has been revoked may petition the Board for reinstatement. "The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons certificated in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed." (Bus. & Prof. Code, § 2307, subd. (c).)

2. The ALJ hearing the petition "may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability." (Bus. & Prof. Code, § 2307, subd. (e).) The ALJ may recommend reinstating a certificate and imposing probationary terms and conditions. (Bus. & Prof. Code, § 2307, subd. (f).)

3. In a proceeding to reinstate a revoked certificate, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his certificate restored. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) A person seeking reinstatement must present strong proof of rehabilitation and a sufficient showing of rehabilitation to overcome the Board's former adverse determination. (*Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Id.*; *Housman v. Bd. of Medical Examiners* (1948) 84 Cal.App.2d 308.)

4. Protection of the public "shall be the highest priority" for the Board and ALJs in exercising their disciplinary authority. (Bus. & Prof. Code, § 2229.) An ALJ "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." (Bus. & Prof. Code, § 2229, subd. (b).) "Where rehabilitation and protection are inconsistent, protection shall be paramount." (Bus. & Prof. Code, § 2229, subd. (c).)

5. Cause does not exist under Business and Professions Code section 2307 to grant

petitioner's request for reinstatement of his certificate, based on Factual Findings 1 through 13.

6. Petitioner failed to make the required showing of rehabilitation, as set forth in Factual Finding 13. The evidence on the record as a whole fails to demonstrate, by clear and convincing evidence, that petitioner is safe to practice medicine.

ORDER

The petition of Michael M. Kamrava for reinstatement of his physician's and surgeon's certificate is denied.

DATED: August 26, 2016

DocuSigned by:
Howard W. Cohen
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HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings