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

**In the Matter of the Second Amended
Accusation Against:**

HARI M. REDDY, M.D.

**Physician's and Surgeon's
Certificate No: A-56371**

Respondent.

Case No: 11-1999-101469

QAH No: L-2001120571

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Division of Medical Quality of the Medical Board of California, as its Decision in the above entitled matter.

This Decision shall become effective at 5:00 p.m. on May 23, 2003.

DATED April 24, 2003

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



Ronald Wender, M.D.

Chair, Panel B

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 Second Amended
Accusation Against:

HARI M. REDDY, M.D.
9065 Silver Box
Victorville, CA 92392

Physician's and Surgeon's
Certificate No. A 56371,

Respondent.

OAH NO. L-2001120571

CASE NO. 11-1999-101469

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge ("ALJ"), Los Angeles Office of Administrative Hearings, at Los Angeles, California on December 17 and 18, 2002, and March 4, 2003.

Deputy Attorney General John E. Rittmayer represented complainant.

Respondent, Hari M. Reddy, M.D., personally appeared and was represented by Henry Lewin, Esq.

Oral and documentary evidence was received and the matter was submitted on March 4, 2003.

FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. Ron Joseph filed the Accusation, the First Amended Accusation, and the Second Amended Accusation in his official capacity as the Executive Director of the Medical Board of California ("the board").

2. On October 16, 1996, the board issued Physician's and Surgeon's Certificate number A 56371, to respondent, Hari M. Reddy, M.D. At all times

relevant to the allegations in the second amended accusation, respondent's certificate was in full force and effect.

Currently, respondent's license is subject to certain terms and conditions imposed as a result of Government Code section 11529 proceedings. The parties, through their attorneys, have waived the time constraints contained in Government Code section 11529, consequently, the proposed decision and decision in this matter are governed by the time provisions of Government Code section 11517.

Introduction

The allegations of the Second Amended Accusation concern respondent's alleged misconduct/unprofessional conduct, during his care, and treatment of five separate patients. The evidence and ultimate Factual Findings concerning each patient will be separately discussed in this Proposed Decision, under the appropriate heading.

Patient J.A.:

3. On January 18, 1998, patient J.A., an 18-year-old female, presented to the emergency room of San Antonio Community Hospital with a complaint of severe itching all over her body. J.A. was taken to an examination room where she was eventually seen by respondent. Respondent and J.A. were alone in the examination room. J.A.'s mother had accompanied J.A. to the hospital and was waiting outside the examination room. Respondent asked J.A. if she wanted her mother to be present in the examination room during the examination. J.A. said "no" she did not want her mother present. Respondent closed the door and, after J.A. told him she had a rash all over her body, respondent asked her to remove her clothes. J.A. removed her jacket and tank top and respondent examined her breasts. J.A. then removed her pants and lay on the examination table. Respondent examined the back of her legs, her stomach, and her pubic area. During the pubic area examination, respondent pulled J.A.'s panties down, but did not remove them. At this juncture, J.A. began crying. Respondent put his hand on J.A.'s shoulder, told her not to cry and that he liked her pretty gold hair. Respondent prescribed some lotion to treat the rash and told J.A. to return in one week.

Although the comment about liking J.A.'s "pretty gold hair" was a little odd, there was nothing unprofessional about respondent's examination, care and treatment of J.A. during this first visit.

4. Prior to J.A.'s second visit, respondent called J.A. and asked how she was doing. J.A. told respondent that the lotion did not seem to help, so respondent told her to come back to see him.

Again, although in this day and age it is odd for a busy physician to initiate a call to a "walk-in" patient with a rash, that the physician has only seen one time, there is nothing unprofessional in doing so.

5. On January 25, 1998, J.A. returned to the hospital and was examined by respondent. Again, J.A.'s mother was with J.A., however, this time respondent did not ask if J.A. wanted her mother present in the examination room during the examination: respondent and J.A. were alone in the examination room. J.A. can not remember the extent of the examination, however, she does recall showing respondent the rash on her hands. Respondent said that there did not seem to be much improvement. He changed the prescription and gave J.A. his pager number.

Again, although it was odd for respondent to give J.A. his pager number, there was nothing unprofessional about respondent's conduct on this occasion.

6. Sometime shortly after J.A.'s second visit, respondent called J.A. at her workplace and asked her if she was feeling any better. During the discussion J.A. told respondent that she worked as a cashier and that her employer was concerned about the rash on her hands and wanted her to get a "work release" from her physician indicating it was safe for her to continue working in a public contact position. Respondent told J.A. he could not give her a "release" unless she returned so respondent could examine her again. J.A. told respondent that it was difficult for her to return for an examination because she did not have a car. Respondent said he would pick her up; then he laughed. When J.A. mentioned that she was saving to buy a car respondent said he would buy her a car; then he laughed.

Again, respondent exhibited odd behavior in initiating a telephone call to J.A. and joking with her about picking her up and buying her a car. This conduct evidences something more than the actions of a concerned physician. Clearly, respondent is focused on something other than a valid concern for a patient's health and welfare.

7. J.A. could not find time to make an appointment to return and be examined by respondent. Instead, J.A. eventually returned to San Antonio Community Hospital on a "walk-in" basis. J.A. saw respondent in the hallway at the hospital, approached him and asked him for a "work release" paper. Respondent told J.A. he wanted to examine her first. The itching had stopped so J.A. told respondent that she was okay and did not want to be examined. Respondent replied that he would not sign any "work release" document without first examining her. J.A. got mad and walked out of the hospital. According to J.A., she was mad at respondent and as far as she was concerned, he was no longer her doctor.

Respondent's conduct on this occasion was not, in and of itself, unprofessional.

8. A few days after J.A.'s third visit to the hospital, as described in Finding 7, above, respondent called J.A. at home, in the evening time. Respondent asked J.A. how she was doing and asked J.A. if she would come and see him. J.A. said "no" and told respondent she was seeing another doctor. Respondent then offered to "give her the paper she wanted" if she would see him after hours so he could take her to dinner. J.A. felt "uncomfortable" so she hung up.

Respondent then called J.A. a second time, at home, after 8 p.m. Respondent told J.A. he wanted to see her "sometime after work". J.A. told respondent, "you should not be calling me—I'm going to report you." In response, respondent said, "no one will believe you." J.A. asked respondent if his wife knew what he was doing and respondent said his wife "did not matter." J.A. hung up, called San Antonio Community Hospital, and reported the incidents with respondent.

Two days later, respondent again called J.A. and asked to see her. J.A. said "no". Respondent asked, "why not?" Respondent said he would pick her up and take her to a restaurant. Respondent was very insistent and told J.A. two times that he loved her. Respondent asked J.A. what she was wearing. Respondent said: "I bet you are sitting there naked on the couch". Respondent then made two kissing sounds and hung up.

Respondent's conduct was extremely inappropriate and unprofessional. His telephone conversations, especially the last one, were akin to "phone sex". Now that respondent's intentions are known, a review of his interactions with J.A. since J.A.'s first visit on January 18, 1998, reveal that respondent's interactions with J.A. were not professionally motivated. Respondent was attracted to J.A. and embarked on a scheme to engage in an unprofessional relationship with a patient. Respondent's claim that he did not try to get J.A. to see him socially until after the physician-patient relationship had ended is disingenuous. Clearly, respondent wanted to initiate a "relationship" with J.A. long before any physician-patient relationship ended. In fact, even after J.A. last saw respondent at the hospital, refused to be examined, and walked away mad, respondent called J.A. and offered to write her a "work release" if she would see him. The offer to write, or sign, a physician's "work release" document for J.A. reveals that even at the final stages of their contact, respondent was still functioning as J.A.'s physician; the physician—patient relationship had not been terminated and respondent's overall conduct with J.A. constitutes sexual misconduct, as well as general unprofessional conduct.

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Patient K.N.C.:

9. K.N.C., did not appear and testify at the hearing, accordingly, the evidence concerning patient K.N.C. was presented via stipulation, respondent's testimony, an audio tape, and a Deputy Sheriff's testimony.

10. The parties stipulated that:

"On or about April 15, 2002, in *People of the State of California v. Hari M. Reddy*, Superior Court, County of San Bernardino, case number FVI-011374, respondent was convicted of the charge [of] battery on K.N.C., in violation of Penal Code section 242, after a plea of nolo contendere. As part of the factual basis for that plea, respondent stipulated the victim of the battery was a patient and the offense occurred in the course of medical treatment." (Exhibit 2.)

11. As part of the criminal investigation leading to respondent's conviction, K.N.C. called respondent at the request of law enforcement so they could tape record the telephone conversation. The tape recording, which was made on or about August 19, 1999, establishes the following:

- 1) K.N.C. was one of respondent's patients.
- 2) K.N.C. had been seen and examined by respondent sometime prior to the telephone conversation.
- 3) During the visit, K.N.C. alleges that respondent engaged in acts of professional misconduct when he grabbed her and kissed her during the examination.
- 4) During the telephone conversation respondent asked K.N.C. for a "passport size" picture of her. K.N.C. asked if he meant wallet size and respondent said that is what he meant. K.N.C. then asked respondent if, during her next visit, he was going to grab her and kiss her again. Respondent said "No, no, no...no, no, no...umm." K.N.C. then asked why respondent had kissed her, to which respondent replied "...forget about that one...." When K.N.C. again asked why respondent kissed her respondent said he was "sorry" and told her "Oh, no, we won't do that anymore, okay?" Toward the end of the conversation respondent told K.N.C. that he "knows" her, so he did not need a picture after all.

12. Sometime after the telephone call was recorded and reviewed by Sheriff's Deputies, respondent was interviewed by Sheriff's Deputy Peterson. Deputy

Peterson appeared at the hearing and testified that during the interview respondent admitted kissing K.N.C. Respondent said "yea probably I did sir." According to respondent, K.N.C. "fell on him [respondent] during the exam" and her head "hit his cheek". Respondent stated that he kissed K.N.C's head when she "fell on him."

13. At the hearing respondent admitted the following: K.N.C., a minor, told respondent that when she was 14 years old her father and she were on a houseboat trip at Laughlin, Nevada. During the trip, her father, who was employed as a Deputy Sheriff, "got drunk" and "had sex with her." According to respondent, K.N.C. began crying and in an effort to console her, respondent kissed her on her forehead.

Clearly, respondent's efforts to "console" K.N.C. failed miserably because as soon as she left respondent's office, K.N.C. called the local Sheriff's Department and reported respondent. The incident ultimately led to respondent's conviction of battery.

Respondent failed to file a child molest/abuse report after K.N.C. disclosed the fact she had been molested/abused by her father. Respondent admitted that he knew he had the professional obligation to report the child molest/abuse, however, he did not file a report because he was afraid to file one. Respondent had not been in this country that long and he was afraid of filing a child molest/abuse report against a member of law enforcement out of fear of retaliation.

14. Respondent's admissions, as set forth in the preceding Findings, considered in conjunction with the factual basis of respondent's conviction, that he committed battery in the course of his medical treatment of K.N.C., reveal that respondent lied to Deputy Peterson during the interview.

15. Respondent's interactions with K.N.C. constitute unprofessional conduct during the care and treatment of K.N.C.

16. Technically, respondent's failure to file a child molest/abuse report constitutes unprofessional conduct, however, his failure to do so is understandable given the specific facts of this particular case.

Patient A. E.:

17. A.E., a 27-year-old, female patient visited respondent on August 14, 1998 at Desert Valley Medical Center. A.E. "signed in" and then completed a health questionnaire. A.E. was at the facility because of a "throat infection." A.E. went to an examination room where she was examined by respondent. The two were alone in the examination room with the door closed. A.E. was wearing a blue sundress. Respondent asked A.E. to breathe in and out. Respondent then went "from breast to breast" and with the stethoscope "piece" in his palm, and "cupped each of her breasts

with his hand." During the examination respondent told A.E. that she "looked pretty" and asked, "do you work out? You have a nice body." Respondent prescribed antibiotics. A.E. testified that the "way he [respondent] touched her and spoke to her made her uneasy". Accordingly, A.E. immediately contacted the hospital's Members' Services Department and filed a complaint against respondent.

18. Respondent claims that A.E. merely misunderstood his comments. He testified that A.E.'s chief complaint was pain in both ears, sore throat, phlegm, and a mild fever for two days. As part of the examination, respondent asked her if she smoked, how much alcohol she consumed, her history of surgeries, and whether she exercised regularly. A.E. said she did exercise regularly and respondent claims he then told A.E. that except for the ear infection she appeared to be in good shape. Respondent denied saying "you work out, you have a nice body". Respondent also denied placing the end of the stethoscope in the palm of his hand and "cupping" each of A.E.'s breasts with his hand.

Respondent's testimony and his denials are not credible. A.E. was a very convincing witness. A.E. appeared to be a very intelligent, sophisticated, 27 year-old, young lady. Certainly this was not the first physical examination she ever had, yet this one was so disturbing that A.E. felt compelled to immediately report her experience to hospital administrators.

19. Respondent acted inappropriately during his examination of A.E. His comments were unprofessional. His conduct in cupping each of A.E.'s breasts in his hand was unprofessional and constituted sexual misconduct with a patient.

Patient V.C.:

20. No evidence was presented in support of the allegations concerning patient V.C., accordingly, the allegations concerning V.C. shall be stricken from the Second Amended Accusation.

Patient T.V.:

21. Patient T.V. was examined by respondent at an Urgent Care facility in Victorville, California. T.V. had missed three days of work due to "the flu" and needed a medical excuse for her employer. T.V. was sitting alone in the examination room when respondent entered. Respondent closed the door. The two were alone in the room as respondent began examining T.V. During the examination respondent was situated behind T.V. listening to her back. Respondent then reached around T.V. and put the listening piece of the stethoscope on the nipple of T.V.'s right breast. Respondent then walked around in front of T.V. He stood near T.V.'s left leg and placed his hip and thigh against her left leg. Respondent then placed his right hand behind T.V.'s left hip. Respondent's face was about a foot from the top of T.V.'s head

as he asked, "is there anything else I can do for you?" in what T.V. characterized as a "very sexy, very suggestive tone." These actions caused T.V. to feel uncomfortable. The tone of respondent's voice and his mannerisms made T.V. feel that he was not engaged in a "legitimate examination." When T.V. said there was nothing more respondent could do, respondent "backed off from me" and hurriedly left the examination room.

22. Again, respondent claims that T.V., like the other patients who complained about his conduct, merely misunderstood and misinterpreted his remarks and actions. Respondent believes that, in part, cultural differences may have contributed to the misunderstandings and misinterpretations. Respondent's explanation is belied by the evidence, his patients' reactions did not result from cultural differences, their reactions resulted from respondent's unprofessional conduct and from his sexual misconduct.

Evidence of Mitigation and Rehabilitation

23. Respondent has successfully completed his criminal probation.

24. Respondent is "...enrolled in the PACE Professional Boundaries Program offered through the University of California San Diego School of Medicine." (Exhibit J.) The course is due to commence on April 23, 2003 and conclude on April 25, 2003, at a cost of \$4,000.00.

25. Respondent testified that he was examined by William Breer, LCSW (Licensed Clinical Social Worker) and that Mr. Breer believes that the accusations against respondent resulted, in part, from cultural differences.

26. Respondent submitted several character letters and declarations indicating that the authors believe respondent is a good and caring physician.

Costs

27. Complainant was not allowed to present evidence of costs due to an egregious violation of the Prehearing Conference Order. The decision to exclude evidence in support of claimant's cost recovery request was not made lightly. Written and oral arguments were heard and a subsequent request for reconsideration was also heard. The decision to exclude evidence of costs was made during the hearing, on the record, however, the salient points will now be summarized.

On October 23, 2002, a Prehearing Conference was held before ALJ H. Stuart Waxman, at Los Angeles, California. At the Prehearing Conference complainant was represented by Deputy Attorney General John Rittmayer and respondent was represented by Henry Lewin, Esq. ALJ Waxman presented both

attorneys with a copy of the proposed Prehearing Conference Order, asked the attorneys to review the proposed order and to discuss any additions, deletions or modifications. Both attorneys reviewed the proposed prehearing conference order and agreed with its contents. Accordingly, ALJ Waxman issued the prehearing conference order, which, in pertinent part provides:

"6. Complainant's counsel is specifically ordered to exchange discovery documents relating to the request to recover costs (e.g., a preliminary certified copy of the actual costs or good faith estimate, declarations, billings/invoices, and/or time sheets relating to costs claimed and time charged by investigators, paralegals, counsel, experts and consultants) by 5:00 p.m. on December 2, 2002." (Exhibit 1.)

According to ALJ Waxman's order, failure to provide discovery shall result in the following sanction(s):

"Except for good cause shown, impeachment or rebuttal, no exhibit...not previously exchanged in discovery may be marked for identification or admitted into evidence at the hearing...." (Exhibit 1.)

Counsel for complainant failed to comply with ALJ Waxman's order. In fact, it was not until the first day of hearing, December 17, 2002, that counsel for complainant provided cost recovery documents to respondent's attorney. Accordingly, respondent's attorney made a motion to exclude all evidence concerning costs. ALJ Hewitt heard argument from both attorneys. Counsel for complainant had no explanation, or excuse for failing to comply with ALJ Waxman's very specific discovery order. Having failed to establish "good cause" for failing to comply with the prehearing conference order, ALJ Hewitt granted respondent's motion and did not receive the cost certifications into evidence.

Subsequently, counsel for complainant filed a "Notice and motion to reopen Complainant's case in chief and/or reconsider ruling excluding evidence of costs of investigation and prosecution; points and authorities in support of motion and proposed order." In the motion, counsel for complainant makes two arguments. These arguments are addressed below:

1) Counsel for complainant first contends that ALJ Waxman's prehearing conference order was ambiguous because counsel for complainant believed the order related only to documents then in existence. Since the cost certifications had not yet been created, they were not discoverable, and ALJ Waxman lacked the authority to "compel complainant to compile information or to create documents." Counsel for

complainant further argues that Title 1, California Code of Regulations, section 1042, subdivision (b), subsection 6 (c) prevents an ALJ from ordering presentation of cost recovery documents prior to the conclusion of complainant's case in chief.

Counsel for complainant is wrong. First, Title 1, Californian Code of Regulations, section 1042, subdivision (b), subsection 6 (c) only addressed the issue of when evidence of costs must be submitted during the hearing process. That section provides: "At the Hearing, the evidence related to costs shall be presented by the agency before conclusion of its case in chief." This section does not address the issue of when documents in support of the cost recovery request (the documents sought to be introduced into evidence) must be exchanged so that respondent is afforded his Due Process rights to prepare his defense(s).

The amount being sought as cost recovery is often a critical issue in the prehearing decisions and strategies of both parties. Often it is one of the main focal points in settlement negotiations; and, if prehearing conferences and/or settlement negotiations are to have any real meaning, complainant must be able to establish those costs at the early stages of the proceedings, in advance of the prehearing conference and settlement conference.

Contrary to counsel for complainant's beliefs, the Office of Administrative Hearings and the Administrative Law Judges do have the power and ability to order cost recovery documents to be exchanged in discovery as part of the prehearing discovery process.

California Government Code section 11511.5 gives ALJ's the power to conduct prehearing conferences which may deal with numerous issues, including, "Exploration of settlement possibilities" and "Exchange of witness lists and of exhibits or documents to be offered in evidence at the hearing."

Title 1, California Code of Regulations, section 1026, subdivision (e) provides, in pertinent part: "...Exhibits shall be exchanged between the parties at least 10 business days before the prehearing conference...."

Title 1, California Code of Regulations, section 1028, subdivision (g) provides, in pertinent part: "Parties or their representatives shall be prepared to participate in settlement discussions...." And, section 1028, subdivision (h) provides, in pertinent part:

"The settlement ALJ may order the parties to bring to the conference the documents pertinent to settlement of the case for examination by the settlement ALJ. This may include reports, records, photographs, books, records,

diagrams, maps, bills, contracts, and memoranda...."
(*emphasis added*)

The preceding statute and regulations reveal a statutory and regulatory policy of encouraging early resolution of cases and of disclosing, in advance of trial, the nature and extent of the evidence that will be offered at the hearing, so the parties can adequately prepare. In Administrative proceedings, such as this, there are no formal pretrial/prehearing discovery opportunities, such as depositions or interrogatories in advance of trial. Accordingly, the exchange of exhibits which is supposed to occur 10 business days prior to the prehearing conference (CCR 1026 (e)) is the first look the parties have at the evidence they must be prepared to address, and rebut, at the hearing. In the present instance, not only did counsel for complainant fail to comply with Title 1, Californian Code of Regulations, section 1026, subdivision (e), he also failed to comply with the additional opportunity to supply cost recovery exhibits given him by ALJ Waxman (Until December 2, 2002, only 15 days before the hearing). Counsel for complainant offered no excuse for his failures to comply with the regulations or with ALJ Waxman's order. Additionally, counsel for complainant did not contact ALJ Waxman, or the Office of Administrative Hearings to request more time to comply with, or to object to, ALJ Waxman's order. Accordingly, complainant has waived any objection to the discovery order. In any event, counsel for complainant's argument that there were no documents in existence to exchange and that complainant can not be ordered to prepare declarations in support of complainant's cost recovery request is disingenuous, at best. Surely, billing documents existed that supported complainant's cost recovery request. If not, one must question the bases for the accuracy of the cost declarations that are customarily submitted by complainant in support of cost recovery requests. ALJ Waxman did not order counsel for complainant to "create" anything. ALJ Waxman ordered production of a "certified copy of the actual costs or good faith estimate", "billings/invoices" and/or "time sheets" in support of complainant's cost recovery request. Normally, complainant provides cost declarations, however, certified copies of the billing records, like those provided clients in the private sector ("TimeSlips" for example) are preferred and would be more helpful to ALJ's in determining the reasonableness of the costs being sought by complainant. For whatever reason, counsel for complainant elected not to provide such documents in advance of trial, thus violating Regulations section 1026, subdivision (e) and ALJ Waxman's order. The sanction, as clearly provided for in ALJ Waxman's order, and, as implemented by ALJ Hewitt, was exclusion of the cost certifications.

2) Counsel for complainant also argues: "Even if Complainant Violated the Order, the Sanction of Excluding All Evidence of Costs is Too Drastic." Counsel for complainant contends that, "...the effect of the ALJ's order is to completely preclude any proof of approximately \$50,000.00 in investigative and prosecution costs. This result, in the face of the complete absence of a showing of prejudice to respondent, can only be viewed as punitive...."

Counsel for complainant is missing the point. The issue here is not whether respondent has suffered any prejudice, the issue is whether counsel for complainant must comply with a valid court order. If attorneys are allowed to disregard court orders then the entire process would be compromised, to the point of extinction. Courts must be able to exercise reasonable control over all proceedings connected with the litigation before them. The power to control their own proceedings, including enforcement of pretrial/prehearing orders, is an inherent power that all tribunals must have in order to provide Due Process protections and allow for the orderly conduct of their proceedings. Without such power and control, the system would, necessarily, fail.

Counsel for complainant's argument that the sanction of exclusion of cost recovery evidence, given the amount of costs, is too severe is without merit. First, counsel for complainant's argument is improper because he is arguing facts not in evidence. The evidence of the amount of the costs incurred by complainant in enforcing and prosecuting the instant action against respondent was not received. Consequently, the ALJ has no evidence that the costs were around \$50,000.00 and counsel for complainant's mention of that amount is improper. Equally important is the fact that counsel for complainant was made fully aware of the consequences of his failure to exchange cost recovery documents in ALJ Waxman's order. The sanction was clearly stated: "... no exhibit...not previously exchanged in discovery may be marked for identification or admitted into evidence at the hearing...." (Exhibit 1.) This ALJ, as is his custom and practice, gave full force and effect to ALJ Waxman's order. The sanction that was promised is the sanction counsel for complainant received.

LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

Patient J. A.:

1. Causes exist for discipline of respondent's certificate pursuant to Business and Professions Code ("Code") sections 2234 and 726 because, as set forth in Findings 3, 4, 5, 6, 7, and 8, respondent committed acts of unprofessional conduct and sexual misconduct during his care and treatment of patient J. A.

Patient K.N.C.:

2. Cause exists for discipline of respondent's certificate pursuant to Code section 2236, subdivision (a) because, as set forth in Findings 10 and 14, respondent has been convicted of an offense substantially related to the functions and duties of a physician and surgeon.

3. Causes exist for discipline of respondent's certificate pursuant to Code sections 2234 and 726 because, as set forth in Findings 11, 12, 13, and 15, respondent committed acts of unprofessional conduct and sexual misconduct during his care and treatment of patient K.N.C.

4. Cause exists for discipline of respondent's certificate pursuant to Code section 2234 because, as set forth in Finding 13 and 16, respondent committed unprofessional conduct by failing to file a child abuse/molest report, however, as stated in Finding 16, respondent's failure to do so is excused, given the particular facts of this case.

Patient A. E.:

5. Causes exist for discipline of respondent's certificate pursuant to Code sections 2234 and 726 because, as set forth in Findings 17, 18, and 19, respondent committed acts of unprofessional conduct and sexual misconduct during his care and treatment of patient A.E.

Patient V.C.:

6. As set forth in Finding 20, no evidence was presented in support of the allegations concerning patient V.C., consequently, these allegations are stricken from the Second Amended Accusation.

Patient T.V.:

7. Causes exist for discipline of respondent's certificate pursuant to Code sections 2234 and 726 because, as set forth in Findings 21, and 22, respondent committed acts of unprofessional conduct and sexual misconduct during his care and treatment of patient T.V.

Overall Assessment of Respondent's Actions:

8. An overall assessment of the case, including: the evidence of rehabilitation and mitigation as set forth in Findings 23, 24, 25, and 26; respondent's actions with his patients; respondent's lack of candor during the investigation, and respondent's lack of candor at the hearing, lead to the following conclusion. Respondent is not an appropriate candidate for probation. Respondent engaged in numerous acts of unprofessional conduct and sexual misconduct with several different patients. His actions were not "misunderstood" due to "cultural differences"; respondent exhibited predatory conduct over a period of time. He was literally, and figuratively, "feeling his patients out" to see if they were interested in pursuing relationships with him; and, he did so under the guise of conducting medical

examinations. Respondent then lied to the police, and lied under oath, during his testimony in these proceedings.

Costs

9. As set forth in Finding 27, there is no evidence in support of complainant's request for costs.

ORDER

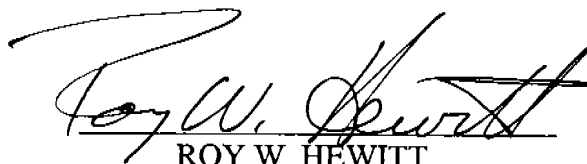
WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent, Hari M. Reddy's Physician and Surgeon's Certificate, Certificate number A 56371, and all rights appurtenant thereto, including but not limited to his authority to supervise physician's assistants pursuant to Business and Professions Code section 3527, are revoked.

IT IS FURTHER ORDERED that:

Complainant's request for costs, pursuant to Business and Professions Code section 125.3, is denied.

Dated: April 7, 2003.

A handwritten signature in black ink, appearing to read "Roy W. Hewitt", is written over a horizontal line.

ROY W. HEWITT

Administrative Law Judge
Office of Administrative Hearings

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 15, 2002
BY Arline Ryzak ANALYST

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

In the Matter of the Accusation Against:

Case No. 11-1999-101469

HARI M. REDDY, M. D.
9065 Svl Box
Victorville, California 92392

Physician's and Surgeon's
Certificate No. A56371,

SECOND AMENDED
ACCUSATION

Respondent.

Complainant alleges:

PARTIES

1. Ron Joseph ("Complainant") brings this Second Amended Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs, for the purpose of adding charges to the First Amended Accusation filed on May 17, 2001.
2. On or about October 16, 1996, the Medical Board of California ("Board") issued Physician and Surgeon's Certificate Number A56371 to Hari M. Reddy, M. D. ("Respondent"). The Physician and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2004, unless renewed.

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3. This Accusation is brought before the Board's Division of Medical Quality under the authority of the following sections of the Business and Professions Code

4. Section 2004 of the Code states:

The Division of Medical Quality shall have the responsibility for the following:

- (a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.
- (b) The administration and hearing of disciplinary actions.
- (c) Carrying out disciplinary actions appropriate to findings made by a medical quality review committee, the division, or an administrative law judge.
- (d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.
- (e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

5. Section 2220 of the Code states except as otherwise provided by law, the Medical Quality may take action against all persons guilty of violating this chapter. It shall enforce and administer this article as to physician and surgeon certificate and the division shall have all the powers granted in this chapter for these purposes not limited to:

- (a) Investigating complaints from the public, from other licensees, from health care facilities, or from a division of the board that a physician and surgeon may be guilty of unprofessional conduct. The board shall investigate the circumstances underlying any report received pursuant to Section 805 within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to Section 805.

1 (b) Investigating the circumstances of practice of any physician and
2 surgeon where there have been any judgments, settlements, or arbitration awards
3 requiring the physician and surgeon or his or her professional liability insurer to
4 pay an amount in damages in excess of a cumulative total of thirty thousand
5 dollars (\$30,000) with respect to any claim that injury or damage was proximately
6 caused by the physician's and surgeon's error, negligence, or omission.

7 (c) Investigating the nature and causes of injuries from cases which
8 shall be reported of a high number of judgments, settlements, or arbitration
9 awards against a physician and surgeon.

10 6. Section 2224 of the Code states the Division of Medical Quality may
11 delegate the authority under this chapter to conduct investigations and inspections and to institute
12 proceedings to the executive director of the board or such other personnel as set forth in Section
13 2020, but shall not delegate its authority to take final disciplinary action against a licensee as
14 provided in Section 2227 and other provisions of this chapter, and may not delegate any authority
15 of the Senior Assistant Attorney General of the Health Quality Enforcement Section, and may not
16 delegate any powers vested in the administrative law judges of the Office of Administrative
17 Hearings, as designated in Section 11371 of the Government Code.

18 7. Section 2227 of the Code provides that a licensee who is found guilty
19 under the Medical Practice Act may have his or her license revoked, suspended for a period not
20 to exceed one year, placed on probation and required to pay the costs of probation monitoring, or
21 such other action taken in relation to discipline as the Division deems proper.

22 8. Section 2234 of the Code states that the Division of Medical Quality shall
23 take action against any licensee who is charged with unprofessional conduct. In addition to other
24 provisions of this article, unprofessional conduct includes, but is not limited to, the following:

25 (a) Violating or attempting to violate, directly or indirectly, or
26 assisting in or abetting the violation of, or conspiring to violate, any provision of
27 this chapter.

28 (b) Gross negligence.

- 1 (c) Repeated negligent acts.
- 2 (d) Incompetence.
- 3 (e) The commission of any act involving dishonesty or corruption
- 4 which is substantially related to the qualifications, functions, or duties of a
- 5 physician and surgeon.
- 6 (f) Any action or conduct which would have warranted the denial of a
- 7 certificate.
- 8 (g) The practice of medicine from this state into another state or
- 9 country without meeting the legal requirements of that state or country for the
- 10 practice of medicine. Section 2314 shall not apply to this subdivision. This
- 11 subdivision shall become operative upon the implementation of the proposed
- 12 registration program described in Section 2052.5.

13 9. Section 2236 of the Code states in part:

14 “(a) The conviction of any offense substantially related to the

15 qualifications, functions, or duties of a physician and surgeon constitutes

16 unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical

17 Practice Act]. The record of conviction shall be conclusive evidence only of the

18 fact that the conviction occurred.

19 ...

20 “(d) A plea or verdict of guilty or a conviction after a plea of nolo

21 contendere is deemed to be a conviction within the meaning of this section and

22 Section 2236.1. The record of conviction shall be conclusive evidence of the fact

23 that the conviction occurred.”

24 10. In and about January to August, 1999, Penal Code section 11166,

25 subdivision (a) provided in part that “...any health practitioner...who has knowledge of or

26 observes a child in his or her professional capacity ...whom he or she knows or reasonably

27 suspects has been the victim of child abuse shall report the known or suspected instance of child

28 abuse to a child protective agency immediately ...” At the same time, Penal Code section

1 11165.8, subdivision (a) included physicians and surgeons in the definition of "health care
2 practitioner" as used in Penal Code section 11166, subdivision (a).

3 11. Section 726 of the Code states: "The commission of any act of sexual abuse,
4 misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct
5 and grounds for disciplinary action for any person licensed under this division, under any
6 initiative act referred to in this division and under Chapter 17 (commencing with Section 9000)
7 of Division 3."

8 COST RECOVERY

9 12. Section 125.3 of the Code states in part:

10 "(a) ...in any order issued in resolution of a disciplinary proceeding before
11 any board within the department or before the Osteopathic Medical Board, the
12 board may request the administrative law judge to direct a licentiate found to have
13 committed a violation or violations of the licensing act to pay a sum not to exceed
14 the reasonable costs of the investigation and enforcement of the case."

15 13. Section 14124.12, subdivision (a) of the Welfare and Institutions Code
16 states:

17 "(a) Upon receipt of written notice from the Medical Board of California,
18 the Osteopathic Medical Board of California, or the Board of Dental Examiners of
19 California, that a licensee's license has been placed on probation as a result of a
20 disciplinary action, the department may not reimburse any Medi-Cal claim for the
21 type of surgical service or invasive procedure that gave rise to the probation,
22 including any dental surgery or invasive procedure, that was performed by the
23 licensee on or after the effective date of probation and until the termination of all
24 probationary terms and conditions or until the probationary period has ended,
25 whichever occurs first. This section shall apply except in any case in which the
26 relevant licensing board determines that compelling circumstances warrant the
27 continued reimbursement during the probationary period of any Medi-Cal claim,
28 including any claim for dental services, as so described. In such a case, the

1 department shall continue to reimburse the licensee for all procedures, except for
2 those invasive or surgical procedures for which the licensee was placed on
3 probation.”

4 FIRST CAUSE FOR DISCIPLINE

5 (General Unprofessional Conduct)

6 14. Respondent is subject to disciplinary action under section 2234 of the
7 Code, in that respondent engaged in multiple acts of misconduct constituting unprofessional
8 conduct, during the care and treatment of five patients. The circumstances are as follows:

9 **Patient J.A.**

10 15. On or about January 18, 1998, Patient J.A.,¹ then an 18-year-old female,
11 presented to the emergency room of the San Antonio Community Hospital with a complaint of
12 severe itching all over her body. She was attended by a female nurse in an examination room.
13 When respondent entered the room the nurse left. Respondent asked J.A. to describe her
14 problem and she replied by showing him her hands and saying that she had itching all over her
15 body. Respondent asked J.A. to disrobe and she complied. Respondent, who was not wearing
16 gloves, touched J.A.'s left breast with his hand in the process of examining her. Respondent had
17 J.A. assume a supine position on an examination table and spread her legs. Respondent lifted her
18 panties, looked at her genitalia and then used his fingers to open the lips or folds of her vagina.
19 When the examination was completed, J.A. dressed. Respondent diagnosed scabies, provided a
20 prescription and cream, and instructed J.A. to return in seven days.

21 16. On or about January 20, 1998, respondent made a telephone call to the
22 home of J.A. to inquire about her condition.

23 17. On or about January 25, 1998, J.A. returned to the hospital to be examined
24 by respondent. During this examination, respondent had J.A. remove her upper garments, and
25 proceeded to examine her breasts, touch her back and check her breathing. Respondent informed
26

27 1. To protect the privacy of the patients, only their initials will be used. Respondent
28 knows the full names of these persons, and will be provided further information if he requests
discovery.

1 J.A. that her condition appeared improved. He instructed J.A. to return in seven days.
2 Respondent also provided J.A. with his pager number and informed her that she could page him
3 if she needed a refill on her prescription.

4 18. On or about January 26 or 27, 1998, respondent made a telephone call to
5 J.A. Instead of asking about her condition, however, he asked her to tell him what she was doing
6 at the moment. He also asked her about her school and boyfriend. J.A. hung up on respondent
7 when he insisted that she talk about her boyfriend.

8 19. On or about January 28 or 29, 1998, J.A. paged respondent because she
9 needed a refill of her Benadryl prescription. When respondent returned her phone call, he offered
10 to bring the medication to her home. During this conversation, respondent asked J.A. if she liked
11 her boyfriend. J.A. asked respondent to explain why he was asking so many personal questions
12 and if he was married. J.A. then hung up on respondent.

13 20. Later, J.A. was informed by her employer that she needed a medical
14 release form to return to work. J.A. telephoned respondent to request this certification of good
15 health. But during this telephone conversation respondent informed J.A. that he could not
16 provide one unless she returned to his office for an examination. J.A. refused to return to
17 respondent, and decided to see another physician.

18 21. Later, J.A. received a late night phone call at her home from respondent.
19 Respondent stated that he would meet her at a restaurant. He promised to provide a certification
20 of health so she could return to work. He promised to pay her hospital bills and buy her a car.
21 Respondent told her that he loved her since the first time he had seen her, that he liked touching
22 her body, her breasts and hair. Respondent stated that his wife didn't matter, and that J.A. had to
23 understand that he loved her and needed to see her. Respondent offered to come to J.A.'s house,
24 pick her up, or meet her somewhere. Respondent asked J.A. if she was naked. He stated "Oh, I
25 bet you're naked. I bet you're sitting there on your couch naked." Respondent asked if he could
26 kiss her on the phone and then blew a kiss to her on the phone. J.A. responded to respondent's
27 sexually provocative comments by threatening to report him to the hospital or the police, and
28 tape record his phone calls. But respondent warned that no one would believe her, stating: "It's

1 your word against my word." J.A. then hung up the phone and informed her mother, who was a
2 witness to the phone call, about what had transpired.

3 22. On or about September 22, 1998, respondent admitted having telephone
4 conversations with J.A., and inviting J.A. to meet him at a restaurant. Respondent was unable to
5 explain why he suggested exchanging kisses with J.A. over the telephone. He did not deny that
6 he blew a kiss to J.A. over the phone.

7 **Patient K.N.C.**

8 23. On or about August 6, 1999, K.N.C., a 15-year-old female, was
9 transported by her father to respondent's clinic for a 2:45 p.m. appointment. After arriving there,
10 K.N.C. entered the clinic alone.

11 24. K.N.C. had been respondent's patient since January 1999 when respondent
12 began treating her for stomach problems. K.N.C. suspected that the medication prescribed by
13 respondent may have been irritating her genitalia. K.N.C.'s appointment on August 6, 1999 was
14 made for the purpose of having respondent address this concern.

15 25. After checking into the clinic, K.N.C., who was dressed in black slacks
16 and black shirt, was escorted to an examination room by a female nurse or medical assistant.
17 After checking K.N.C.'s pulse and temperature, the female left the room. About ten minutes
18 later, respondent joined K.N.C. in the room. Respondent then had K.N.C. lay supine on the
19 examination table, and instructed her to lift up her shirt and bra and place her hands over her
20 head. K.N.C. complied which resulted in the exposure of her breasts.

21 26. Respondent, who was standing at the head of the table, used both hands to
22 examine K.N.C.'s breasts for about 3 ½ minutes. While respondent was touching her breasts
23 with his hands, he told her that she had "beautiful lips." When respondent finished touching her
24 breasts, he instructed her to unbutton and unzip her pants. K.N.C. complied. Respondent then
25 moved her pants downward, exposing her abdominal and pelvic areas.

26 27. Respondent pressed on K.N.C.'s stomach with his hands for about one
27 minute, touching her public hair in the process. After concluding this part of the examination,
28 respondent had K.N.C. sit-up and readjust her clothing.

1 28. Respondent made a joke, which caused K.N.C. to laugh. As she was
2 laughing, respondent grabbed her head and kissed it. K.N.C. responded to this unexpected
3 conduct by pushing respondent away. Respondent then left the room, leaving K.N.C. alone
4 inside.

5 29. Respondent entered and left the room several more times during this
6 occasion. On these brief visits, respondent engaged K.N.C. in conversation about her sexual
7 habits. Respondent asked if she was sexually active, the frequency of intercourse, whether she
8 masturbated, how she masturbated, whether she let guys ejaculate inside of her, and whether she
9 used condoms or birth control. Respondent also asked K.N.C. for a photograph of herself.

10 30. During respondent's last visit to K.N.C. in the examination room on this
11 occasion, and while standing between her and the door, respondent handed her a receipt. While
12 K.N.C. was looking at the receipt, respondent put his right hand on her left shoulder and his left
13 hand on her right side and pulled her towards him. Surprised by the suddenness of respondent's
14 advance, K.N.C. reacted by attempting to break away. But respondent refused to let her go free,
15 and instead grabbed her sides, turned her towards him, and attempted to kiss her on the lips.
16 K.N.C. pushed respondent away and said, "No!" Respondent then stepped away from her and
17 walked out of the room.

18 31. At no time during this encounter between respondent and K.N.C. was a
19 third party present in the examination room.

20 32. On or about August 19, 1999, after reporting the incident to the Victorville
21 Sheriff's Department, and at the request of the department, K.N.C. placed a tape recorded,
22 pretext phone call to respondent. During this phone conversation, respondent told K.N.C. that he
23 preferred a passport or wallet size photograph of her, rather than a photograph of her with her
24 mother. Respondent apologized to K.N.C. when she asked why he had tried to kiss her. When
25 K.N.C. informed respondent that his advances had made her feel uncomfortable, respondent
26 promised not to do it anymore.

27 **Patient A.E.**

28 33. A.E. then age 27, saw respondent in Urgent Care at Desert Valley Medical

Center on August 14, 1998. She was there for an ear and throat infection. In the process of listening to her breathing with a stethoscope, defendant placed the instrument first on her left breast and then on her right breast. Other physicians had always listened to her breathing by placing the stethoscope on the chest of A.E. While he was listening to her breathing with the stethoscope, defendant asked A.E. if she worked out and commented that she had a beautiful body. Respondent then asked the patient when she had her last Pap smear. A.E. was so shaken by this experience, she left the examination room and later that day lodged a complaint with the medical center.

Patient V.C.

34. V. C., then age 38, saw defendant approximately 20 times in 1997 for a chronic ear infection. Over the course of her visits, respondent was very "touch oriented" and would put his hands on her neck, thighs and on one occasion, touched one of her breasts. On the day defendant touched the breast of V.C., defendant was in the process of raising his hands to look into her ears. As he lifted his hands, his left hand went under her left breast and actually lifted the breast. At the time defendant did this, he was standing between the legs of V.C. as she sat on the examining table. Defendant positioned himself in this manner during most of V.C.'s visits. Defendant also asked V.C. about her sex life on several occasions.

Patient T.V.

35. T.V. visited Prime Care Urgent Care in Victorville for the flu on March 19, 1999. She sat on an examination table. From behind, respondent placed a stethoscope on her right nipple. He then moved around the table and leaned against her with his right hip and thigh against her left leg. Finally, he asked her in a "low seductive voice" whether there was anything else he could do for her.

SECOND CAUSE FOR DISCIPLINE

(Sexual Misconduct)

36. Respondent is subject to disciplinary action under section 726 of the Code, in that respondent engaged in sexual misconduct with one or more patients. The circumstances are as follows:

1 37. The facts alleged in above numbered paragraphs 15 through 35 are
2 incorporated by reference herein as if fully set forth.

3 THIRD CAUSE FOR DISCIPLINE

4 (Criminal Conviction)

5 38. Respondent is subject to disciplinary action under section 2236
6 subdivision (a) of the Code in that he has been convicted of an offense substantially related to the
7 qualifications, functions, or duties of a physician and surgeon. The circumstances are as
8 follows:

9 39. The facts and circumstances alleged in paragraphs 23 through 32 above are
10 incorporated here as if fully set forth.

11 40. With respect to the incidents alleged above concerning patient K.N.C., in
12 *People of the State of California v. Hari M. Reddy*, Superior Court, County of San Bernardino
13 case number FVI-011374, respondent was charged with three counts lewd acts on a child, a
14 violation of Penal Code section 288, subdivision (c)1.

15 41. On or about April 15, 2002, the complaint in the above criminal case was
16 amended to allege that respondent committed battery on patient K.N.C. in violation of Penal
17 Code section 242. On the same date, respondent was convicted of that charge after a plea of nolo
18 contendere.

19 FOURTH CAUSE FOR DISCIPLINE

20 (General Unprofessional Conduct)

21 42. Respondent is subject to disciplinary action under section 2234 of the
22 Code, in that respondent failed to report an instance of known or suspected child abuse, in
23 violation of Penal Code section 11166, subdivision (a). The circumstances are as follows:

24 43. In connection with the plea alleged in paragraphs 40 and 41 above,
25 respondent was interviewed by a San Bernardino County probation officer on May 17, 2002.
26 Respondent told the probation officer that patient K.N.C. told respondent that she had been
27 molested by her own father when the father was in a drunken state. Respondent further stated
28 that he had not reported this information after he learned the father was a law enforcement officer

1 because he was afraid of the problems the father could cause for respondent.

2 PRAYER

3 WHEREFORE, Complainant requests that a hearing be held on the matters herein
4 alleged, and that following the hearing, the Division of Medical Quality issue a decision:

- 5 1. Revoking or suspending Physician and Surgeon's Certificate Number
6 A56371, issued to Hari M. Reddy, M. D.;
- 7 2. Revoking, suspending or denying approval of Hari M. Reddy M.D.'s
8 authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 9 3. Ordering Hari M. Reddy, M.D. to pay the Division of Medical Quality the
10 reasonable costs of the investigation and enforcement of this case, and, if placed on probation,
11 the costs of probation monitoring;
- 12 4. Taking such other and further action as deemed necessary and proper.

13 DATED: July 15, 2002.

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17 RON JOSEPH
18 Executive Director
19 Medical Board of California
20 Department of Consumer Affairs
21 State of California
22 Complainant

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