

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

In the Matter of the Petition for
Reinstatement by:

HARI NARAYANA MA REDDY

Petitioner.

Case No. 27-2010-207068

OAH No. 2011031083

DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on July 21 and 22, 2011, in Riverside, California.

Harinder K. Kapur, Deputy Attorney General, appeared on behalf of the people of the State of California.

Gary Whittenberg, Attorney at Law, appeared on behalf of the petitioner, Hari Narayana Ma Reddy.

The record was closed on July 22, 2011.

The proposed decision of the administrative law judge was submitted to Panel B of the Medical Board of California (hereinafter "board") on August 5, 2011. After due consideration thereof, the board declined to adopt the proposed decision and thereafter on November 8, 2011, issued an Order of Nonadoption and subsequently issued an Order Fixing Date for Submission of Written Argument. On January 3, 2012, the board issued a Notice of Time for Oral Argument. Oral argument was heard on February 2, 2012, and the board voted on the matter that same day. The time for filing written argument in this matter having expired, written argument having been filed by both parties and such written argument, together with the entire record, including the transcript of said hearing, having been read and considered, pursuant to Government Code Section 11517, the board hereby makes the following decision and order:

SUMMARY

The issue is: Has petitioner shown by the most clear and convincing evidence that efforts made toward rehabilitation have been successful.¹

In this decision, it is found and determined that petitioner has made substantial progress toward rehabilitation and that it would not be contrary to the public interest for him to be given a probationary license subject to appropriate conditions.

FACTUAL FINDINGS

Licensure

1. On October 16, 1996, the Medical Board of California issued Physician's and Surgeon's Certificate Number A 56371 to the petitioner, Hari Narayana Ma Reddy.
2. Petitioner was born in India in 1953. He received his medical training in India and practiced there until 1995. He came to California and performed a three year residency from 1995 to 1998 at the San Bernardino County Medical Center. He was board certified in family practice in 1998. Petitioner earned a Master's degree in Business Administration from California State University, San Bernardino in 2001 and a Master's degree in Health Administration from La Verne University in 2005.
3. Petitioner has been married for 33 years. He and his wife have a daughter who is a physician practicing in Dallas, Texas.
4. In an accusation dated March 27, 2001, Ron Joseph, Executive Director of the Medical Board of California, alleged that petitioner had engaged in multiple acts of unprofessional conduct. Mr. Joseph amended the accusation twice. The second amended accusation was dated May 17, 2001. After a hearing, the board issued a decision revoking petitioner's license. The board's decision became effective on May 23, 2003.
5. At the time of the events leading to the revocation – 1997 through 1999 – petitioner was employed by the Desert Valley Medical Group and was practicing in Victorville. Petitioner's brother-in-law, Prem Reddy, owns Desert Valley Medical Group. Petitioner was arrested on criminal charges in 1999. At that time, he was suspended with pay by the group, and then, in April of 2000, he was terminated from employment. In January of 2001, he rejoined the group with restrictions that included a requirement that he have a chaperone present during the examination of female patients. Petitioner was terminated from the group when his license was revoked in May of 2003.

¹ *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547.

6. By a petition dated May 31, 2006, petitioner sought reinstatement of his license. After a hearing, the board issued a decision denying the petition. That decision became effective on February 25, 2008.

7. By a petition dated May 17, 2010, petitioner again seeks reinstatement of his license. That petition is the subject of the present proceeding.

Criminal Conviction

8. In addition to the administrative revocation of petitioner's license, he suffered a criminal conviction. He was arrested in 1999 on charges growing out of his having engaged in sexual misconduct with female patients. In April of 2002, petitioner entered into a negotiated plea agreement. Pursuant to the agreement, he was convicted of one count of battery, a misdemeanor. The conviction was on a plea of nolo contendere.

9. The court placed petitioner on supervised probation for 36 months. As conditions of probation, the court required petitioner to pay a fine of \$2,000, pay fees, have a chaperone present when he attended to female patients, perform 1000 hours of community service, and obtain counseling. Petitioner complied with these conditions; he performed his community service by teaching computer courses at a local library.

10. To satisfy one of the conditions of the criminal probation, petitioner received counseling from William Breer, a licensed clinical social worker and licensed marriage, family, and child counselor. From June 24 through October 21, 2002, petitioner attended eight counseling sessions. Mr. Breer summarized his treatment and impressions in a memorandum dated October 21, 2002. Mr. Breer noted that petitioner denied involvement in the incidents and feared that false allegations had been made by people who intended to file a lawsuit against him. Mr. Breer said petitioner worked diligently in the psychotherapy sessions, and Mr. Breer did not believe that petitioner was a pedophile. Mr. Breer also said that, whether these were false allegations or the events actually occurred, "I believe there is a cultural factor here." Mr. Breer explained that petitioner's friendly, easygoing approach with patients may "bring out conflicts in females with unresolved sexual issues. They can interpret friendliness as an invitation into sex or romance. I have helped Dr. Reddy spot that kind of situation and helped him develop techniques to keep such patients at proper distance. In a way it is sad that professionals have to conduct themselves this way; however, it is a reality of modern life."

11. In Mr. Breer's opinion, petitioner was a conscientious and competent physician. Mr. Breer wrote, "Prudence suggests he should not see female patients without a chaperone." Mr. Breer suggested that a mental health professional review the matter in two years to determine whether the requirement of a chaperone was still warranted. He said, "It would be a disservice to the community to end [petitioner's] ability to practice."

12. At the time of this therapy, petitioner had not accepted responsibility for his

sexual misconduct. He was not truthful in describing the underlying events to Mr. Breer. Consequently, Mr. Breer's therapy did not effectively address petitioner's behavior. Mr. Breer appeared to have accepted petitioner's position that he was not responsible and that his patients were to blame.

Grounds for License Revocation

13. A hearing on the accusation to revoke petitioner's license was held in December of 2002 and March of 2003. The hearing was before Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings.

14. Judge Hewitt found as follows: During the period of 1997 through 1999, petitioner committed acts of sexual misconduct during his care and treatment of four female patients, one of whom was 16 years old. The revocation of petitioner's license was based on these acts of misconduct and on petitioner's criminal conviction. Judge Hewitt also found that the 16-year-old patient told petitioner that her father had sexually molested her, but petitioner, who was a mandated reporter, failed to report her allegation to the appropriate authorities. Judge Hewitt determined that this was a further ground for revoking petitioner's license but that, because of the particular facts of the case, petitioner's failure to report was excused.

Evidence Presented in the Hearing on Petitioner's Earlier Petition for Reinstatement

15. A hearing on petitioner's 2006 petition for reinstatement of his license was held in November of 2007 and February of 2008. The hearing was before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings.

16. Petitioner presented evidence that, between June of 2005 and May of 2006, he completed 122.25 hours of Continuing Medical Education (CME). He presented evidence that, if the board reinstated his license, the Desert Valley Medical Group was prepared to have him rejoin the group.

17. Petitioner admitted that, in the past, he had been untruthful in denying the acts of sexual misconduct. Petitioner said he had come to accept responsibility for those acts. He said he had gone through a long healing process that, starting in January of 2007, included psychotherapy sessions with L. D. Miller, Ph.D.

18. Dr. Miller was licensed as a marriage and family therapist in 1979, received his doctorate in 1981, and was licensed as a clinical psychologist in 1983. He has extensive experience and training in clinical and forensic psychology.

19. Petitioner began therapy with Dr. Miller on January 8, 2007. Petitioner presented with signs of anxiety and depression concerning his effort to have his medical license reinstated

and to re-enter the practice of medicine. Petitioner felt he had been mistreated due to misunderstandings. At their second session, petitioner gave Dr. Miller a copy of the board's decision revoking petitioner's license. At their third session, Dr. Miller confronted petitioner with the differences between what petitioner had told him and what Judge Hewitt had found. Dr. Miller concluded that petitioner demonstrated some denial, minimalization, and rationalization of his actions.

20. Petitioner told Dr. Miller about the continuing education courses he had attended. Dr. Miller asked whether petitioner had attended courses on ethics or the doctor and patient relationship. Petitioner had not. He decided to attend a course titled "Maintaining Proper Boundaries" given February 7 through 9, 2007, in Texas, sponsored by the Vanderbilt University School of Medicine and the Sante Center for Healing. Petitioner successfully completed that course. Petitioner stated that the course "really opened my eyes." There were group sessions, seminars, films, and exercises. Dr. Miller stated that, during their fourth therapy session, petitioner recognized that attending the seminar helped him to accept responsibility for his actions. Petitioner demonstrated new insights and understanding of the ways in which he had violated boundaries with his patients. As therapy continued, petitioner developed an understanding of the effects of his actions and developed empathy for his patients. Dr. Miller encouraged petitioner to focus on a doctor's duty to provide an atmosphere of safety and trust. Dr. Miller encouraged petitioner to acknowledge his failure to discharge that duty.

21. Dr. Miller did not obtain any psychological testing.

22. Dr. Miller expressed his opinion that there were no indications that petitioner was a sexual predator and expressed his opinion that, if petitioner's license were reinstated, petitioner would not pose a risk to his patients.

23. Petitioner stated that he understood that his license was revoked because of his sexual misconduct with a number of patients, that he crossed the boundaries between doctor and patient, and that he touched patients inappropriately. He acknowledged that the allegations against him were not the result of any cultural differences and that he had not been misunderstood or misjudged.

24. Petitioner testified that he had experienced feelings of shame, guilt, and humiliation over his misconduct. He stated that the events had taken a toll on his relationship with his wife of 31 years and his relationship with his adult daughter. He said his conviction and license revocation significantly affected his relationships with friends and family.

25. The Office of the Attorney General engaged Mohan Nair, M.D., to review petitioner's evidence of rehabilitation. Dr. Nair is board certified in psychiatry, child and adolescent psychiatry, and forensic psychiatry. He also holds certifications in addiction medicine and clinical psychopharmacology. Dr. Nair received his graduate training in India and his post-graduate training at Harvard University, McLean Hospital/Massachusetts General Hospital, and

the University of California at Irvine. He was licensed in California in 1979. Dr. Nair has extensive experience and training in clinical and forensic psychiatry.

26. Dr. Nair reviewed various documents, including the decision revoking petitioner's license, the Breer and Miller reports, Dr. Miller's progress notes, petitioner's narrative statement, and the investigator's report. Dr. Nair stated his opinion that petitioner had not received the type of therapy he needed. Dr. Nair listed several "Treatment Modules" that would be appropriate to treat someone with problematic sexual interests.

27. Dr. Nair said the evaluations provided by Mr. Breer and Dr. Miller lacked objectivity, inappropriately accepted petitioner's views of events, and tended to provide excuses for petitioner. He believed both therapists should have addressed the fact that people who engage in sexual misconduct can be deceitful and can suffer from cognitive distortions.

28. In Dr. Nair's opinion, petitioner needed intensive treatment focused on sexual behaviors – including objective testing, penile plethysmography, a polygraph, and relapse prevention follow up for at least two years.

The Board's Denial of Petitioner's 2006 Petition for Reinstatement

29. Judge Rosenman found that petitioner had failed to prove that his license should be reinstated. The board, adopting Judge Rosenman's decision, denied the petition. Judge Rosenman wrote:

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

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

slow and gradual process. What is lacking is convincing evidence that Petitioner's recent revelations are sufficient to establish rehabilitation to the extent that re-licensure is appropriate at this time. All of the supporting evidence should be viewed in light of when Petitioner experienced his breakthrough, in February and March 2007. References and reports dated earlier, which attest to Petitioner's rehabilitation, are therefore entitled to lesser weight and credibility and are less convincing. Petitioner has not submitted evidence that he is sufficiently rehabilitated at this time. Petitioner's showing has not overcome the board's former adverse determination and, therefore, Petitioner has not established by clear and convincing evidence that his license should be reinstated at this time.

Petitioner's Completion of the Intensive Treatment Dr. Nair Recommended

30. On March 3, 2008, petitioner enrolled in a treatment program called Sex Offender Solutions (SOS). He completed that program on May 4, 2010.

31. Wesley B. Maram, Ph.D., is licensed as a psychologist in California. Dr. Maram founded SOS and continues to serve as the clinical director. Dr. Maram testified that he knows Dr. Nair, who testified in the earlier petition hearing. Dr. Maram said he has referred clients to Dr. Nair for psychotropic medication management and that Dr. Nair is very familiar with SOS.

32. In Dr. Nair's testimony concerning the treatment he believed petitioner needed, i.e., intensive treatment that focuses on sexual behaviors, Dr. Nair, in effect, described the components of SOS.

33. In SOS, petitioner participated in nine testing sessions and 75 treatment sessions. Dr. Maram's staff, under his direction, provided the testing and treatment. Dr. Maram directly participated in five evaluation and treatment sessions. An initial psychological assessment dealt with petitioner's mental state, treatment plan goals, and relapse prevention goals.

34. During the course of the SOS program, the following tests were administered: The Minnesota Multiphasic Personality Inventory (MMPI-2); polygraph testing on June 16, 2008, January 10, 2009, and October 31, 2009; penile plethysmograph (PPG) testing on May 28, 2008, and April 14, 2010; the Able Assessment for Sexual Interests (AASI-2) on May 28, 2008; the Substance Abuse Subtle Screening Inventory (SASSI-3); and the Clark Sex History Questionnaire for Males-Revised (SHQ-R)

35. Dr. Maram reported the following: The MMPI-2 was within normal range. However, it indicated personality characteristics of thrill seeking, impulsivity, proneness to rule infractions, and high-risk behavior. These characteristics may make the petitioner vulnerable to clashes with authority at times. The three administrations of the polygraph tests did not indicate

that petitioner was engaging in any deception. The two administrations of the PPG reflected a heterosexual arousal pattern to adult females. The tests supported an interpretation of non-deviant arousal. The AASI-2 reflected a sexual interest pattern to female adolescents, male and female adults, and prepubescent males and females. However, a deviant arousal pattern to prepubescent children is not supported by documentary history, conclusions of the PPG results, or polygraph results. The SASSI-3 indicated a low probability of a substance dependence disorder. The SHQ-R provided information noted regarding other testing and indicated that petitioner is masculine identified with no feminine longings.

36. Dr. Maram also reported the following: Petitioner appeared for scheduled appointments and complied with his treatment contract. No warning letters were issued to him. Petitioner's response to group and individual treatment was consistently cooperative, and he demonstrated that he was learning relapse prevention skills. Initially, he appeared not to internalize concepts, and his involvement appeared to be superficial. Initially, he did not reveal a real depth of understanding. After this was brought to his attention and after some individual therapy sessions, his work improved substantially. His verbal involvement showed some improvement. He gained insight and identified past narcissistic feelings of entitlement as having lead to his offending behavior. Petitioner has a narcissistic personality trait, but he does not have Narcissism as a diagnosable mental disorder. Petitioner developed an improved and more comprehensive relapse prevention plan that plotted realistic avoidance of high risk circumstances, escape strategies, and avoidance strategies. Petitioner has been consistent in taking full responsibility for his offensive behavior. He did not project blame on his victims. He did not employ minimization or justification for his misconduct.

37. Dr. Maram expressed the following opinions: Petitioner's progress has been good. He responded well to treatment. He does not suffer from a mental disorder that predisposes him to sexual crimes. Petitioner has been rehabilitated. He is unlikely to act out sexually again. Dr. Maram said that a risk assessment analysis supports these conclusions.

38. Since completing the SOS program in May of 2010, petitioner has returned for a few individual sessions with Dr. Maram.

Other Evidence of Petitioner's Progress Toward Rehabilitation

39. Petitioner made a motion pursuant to Penal Code section 1203.4, to have his conviction set aside and to have the case dismissed. On February 9, 2005, the court granted the motion.

40. Between April of 2010 and April of 2011, petitioner completed 51.5 hours of CME.

41. Since having his license revoked, petitioner has maintained gainful employment. For most of the time he has worked for the Desert Valley Medical Group as a clerk, auditor, and accounts collector. He has had no patient contact.

42. The following is a paraphrased summary of part of petitioner's testimony in the present proceeding: At the time of the hearing on my earlier petition for reinstatement, I was still working my way through the embarrassment and was still trying to blame others. I now acknowledge that what I did was wrong. I broke the trust of my patients. I feel terrible about it. I feel humiliated. Under the guise of providing medical care, I exploited patients for my own sexual interests. I was thinking only of myself. Looking back, I am disgusted with myself. I will live with the shame. In the SOS program, I gained insight into the thinking and feelings that led to my abusing patients. I had worked and studied diligently. I mistakenly came to feel that that entitled me to whatever I wanted – without regard to the consequences for other people. I now understand how wrong I was. I will never repeat such bad behavior.

43. Petitioner testified about his failure to report the 16-year-old girl's allegation that her father had molested her. Petitioner said, "If I had it to do over, I definitely would report."

44. Petitioner said his wife, his daughter, and family friends have been very supportive of his rehabilitation.

45. Petitioner said he has continued to see Dr. Maram after completing the SOS program because Dr. Maram is a good therapist and because there always is room to grow.

46. Petitioner said he has kept current in his field by attending CME courses. He said he has completed approximately 484 hours since 2005, and 130 of those have been since 2008. He said he also has regularly read the Journal of the American Medical Association and journals concerning family practice.

47. Petitioner was contrite.

References

48. Yash Paul Subherwal, M.D., is a board certified internist who practices with the Desert Valley Medical Group. He has known petitioner professionally since 1998. At some point, they became personal friends. They worked together at Desert Valley Medical Group until petitioner's license was revoked. Before petitioner's license was revoked, Dr. Subherwal and his family were petitioner's patients. Dr. Subherwal wrote a letter dated May 10, 2010, in support of petitioner's effort to have his license reinstated. Dr. Subherwal also testified. The following is a paraphrased summary of part of Dr. Subherwal's letter and testimony: I am fully aware of the matter of petitioner's license having been revoked because of a finding of sexual misconduct. Petitioner has always demonstrated sound medical knowledge and skills. He is a very good physician – very competent. I have attended a number of CME courses with petitioner and am of

the opinion that petitioner has kept up to date with developments in his specialty. In 2007, petitioner began discussing his conviction with me. At that time, he did not accept responsibility for what he had done, but that has changed completely. He now fully accepts responsibility and is very remorseful. Originally, petitioner's concern was for his family and what he had put them through, but now his first priority is not to put his patients through bad behavior.

49. H. Rexford McDaniel, D.O., is a member of the American College of Osteopathic Medicine's Section on Obstetrics and Gynecology. He is board certified in obstetrics and gynecology. He and petitioner were residents at San Bernardino Medical Center in 1995 through 1998. Dr. McDaniel was the chief resident and, in that capacity, supervised petitioner. Dr. McDaniel now practices with the Desert Valley Medical Group. He wrote a letter dated May 10, 2010, in support of petitioner's effort to have his license reinstated. Dr. McDaniel also testified. The following is a paraphrased summary of part of Dr. McDaniel's letter and testimony: Petitioner was an excellent resident. He had extensive experience before we began our residency program, and he had excellent skills. Later, we began practicing together with the Desert Valley Medical Group. We referred patients to each other; my patients found petitioner to be exceptional. His sexual misconduct was a complete shock to me. But he is remorseful, and I believe he has been rehabilitated. If petitioner's license were reinstated, I would not hesitate to refer my patients to him. I would not hesitate to refer my daughters to him.

It is Likely that, if the Petition is Granted, Petitioner Will be able to Rejoin the Desert Valley Medical Group

50. Margaret R. Peterson, Ph.D., is the chief executive officer of the Dessert Valley Hospital and the Desert Valley Medical Group. Dr. Peterson testified that she is aware of petitioner's offenses and the board's grounds for revoking his license. She said Desert Valley Medical Group has an opening for a family practice specialist and that, if petitioner's license is restored, she will recommend that the group hire petitioner. The group's credentialing committee has ultimate authority over the matter.

51. Dr. Peterson said the group has experience in dealing with physicians, nurses, and pharmacists who have been placed on probation in connection with substance abuse offenses, and she is confident they can provide vigilant supervision of petitioner. She said the credentialing committee would determine whether to impose restrictions over and above any conditions the board might place on petitioner's license.

Credibility

52. Petitioner was a very credible witness. He did not exaggerate. He responded to questions readily and with appropriate detail.

The Attorney General's Recommendation

53. The Deputy Attorney General, Ms. Kapur, appearing on behalf of the people of the State of California, recommended that the petition be granted and that petitioner be given a probationary license. Ms. Kapur also made recommendations concerning conditions of probation.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The purpose of the Medical Practice Act is to assure the high quality of medical practice. In furtherance of that goal, the board seeks to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

2. The purpose of administrative discipline is not to punish licensees but to protect the public by eliminating those practitioners who are dishonest, immoral, disreputable, or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

Standard of Proof

3. In a proceeding to restore a disciplined professional license, “the burden at all times rests on the petitioner to prove that he has rehabilitated himself and is entitled to have his license restored, and not on the board to prove the contrary.” (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

4. “In seeking reinstatement, petitioner bears a heavy burden of proving rehabilitation. He must show by the most clear and convincing evidence that efforts made toward rehabilitation have been successful.” (*Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.)

Petitioner’s Rehabilitation

5. By reason of the matters set forth in Findings 16 through 24, 30 through 49, 52, and 53, it is determined that petitioner has proven by clear and convincing evidence that he has made substantial progress toward rehabilitation and that it would not be against the public interest for him to hold a probationary license subject to appropriate conditions.

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

7. *Public Protection.* The board believes that, given the severity of petitioner’s conduct, including the fact that it involved an adolescent, probation must be of sufficient length

to ensure public protection. In this situation, the board believes a seven-year probationary period is required, and this is also consistent with the board's disciplinary guidelines.

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

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

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

ORDER

Certificate Number A 56371, formerly issued to the petitioner, Hari Narayana Ma Reddy, is reinstated. The certificate immediately is revoked. However, the revocation is stayed, and petitioner is placed on probation for seven years on the following conditions.

1. Within 60 calendar days from the effective date of this decision, petitioner shall enroll in a professional boundaries program, at petitioner's expense, equivalent to the Professional Boundaries Program, Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine (Program). Petitioner, at the Program's discretion, shall undergo and complete the Program's assessment of petitioner's competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the decision, accusation, and any other information the board or its designee deems relevant. The Program shall evaluate petitioner at the end of the training, and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the board or its designee. Petitioner's failure to complete the entire Program not later than six months after his initial enrollment shall constitute a violation of probation unless the board or its designee agrees in writing to a later time for completion. Based on petitioner's performance in and evaluations from the assessment, education, and training, the Program shall advise the board or its designee as to whether there is a recommendation for additional education, training, psychotherapy, or other measures necessary to ensure that petitioner can practice medicine safely. Petitioner shall comply with Program recommendations. At the completion of the Program, petitioner shall submit to a final evaluation. The Program shall provide the results of the evaluation to the board or its designee. The Program's determination as to whether petitioner successfully completed the Program shall be binding. Failure to participate in and successfully complete all phases of the Program, as outlined above, is a violation of

probation. If petitioner fails to complete the Program within the designated period, petitioner shall cease the practice of medicine within 72 hours after the board or its designee notifies him that he failed to complete the Program.

2. Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program"). Respondent shall successfully complete the Program not later than six (6) months after respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's area of practice in which respondent was alleged to be deficient, and at minimum, a 40 hour program of clinical education in the area of practice in which respondent was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with Program recommendations.

At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. Determination as to whether respondent successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

Respondent shall not practice medicine until respondent has successfully completed the Program and has been so notified by the Board or its designee in writing, except that respondent may practice in a clinical training program approved by the Board or its designee. Respondent's practice of medicine shall be restricted only to that which is required by the approved training program.

3. Within 60 calendar days of the effective date of this decision, petitioner shall take and pass an oral and/or written examination administered by the probation unit. The board or its designee shall administer the oral and/or written examination in a subject to be designated by the board or its designee, and the oral examination shall be audio tape recorded. If petitioner fails the first examination, petitioner shall be allowed to take a second examination, which may consist of an oral and/or written examination. The waiting period between the first and second

examinations shall be at least 90 calendar days. Failure to pass the required oral and/or written examination within 180 calendar days after the effective date of this decision is a violation of probation. Petitioner shall pay the costs of all examinations. For purposes of this condition, if petitioner is required to take and pass a written exam, it shall be either the Special Purpose Examination (SPEX) or an equivalent examination as determined by the board or its designee. If petitioner fails to pass the first examination, petitioner shall be suspended from the practice of medicine. Petitioner shall cease the practice of medicine within 72 hours after the board or its designee notifies him that he has failed the examination. Petitioner shall remain suspended from the practice of medicine until petitioner successfully passes a repeat examination, as evidenced by written notice to petitioner from the board or its designee.

4. Within 30 calendar days of the effective date of this decision, and on whatever periodic basis thereafter that the board or its designee may require, petitioner shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a board-appointed, board certified psychiatrist, who shall consider any information the board or its designee provides and any other information the psychiatrist deems relevant. The psychiatrist shall furnish a written evaluation to the board or its designee. Psychiatric evaluations conducted prior to the effective date of this decision shall not be accepted towards the fulfillment of this requirement. Petitioner shall pay the cost of all psychiatric evaluations and psychological testing. Petitioner shall comply with all restrictions or conditions the evaluating psychiatrist recommends. Petitioner shall comply within 15 calendar days after the board or its designee notifies him that he must comply. Failure to undergo and complete a psychiatric evaluation and psychological testing or a failure to comply with required additional conditions or restrictions is a violation of probation.

5. Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations (CCR) section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

6. Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in respondent's field of practice, and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

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

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine, and whether respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility.

within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, respondent may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

7. During probation, petitioner shall have a third party chaperone present while consulting, examining, or treating female patients. Petitioner shall, within 30 calendar days of the effective date of this decision, submit to the board or its designee for prior approval the name or names of persons who will act as the third party chaperone. Each third party chaperone shall initial and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the decision and the accusation and fully understand the role of the third party chaperone. Petitioner shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient name, address and telephone number; 2) medical record number; and 3) date of service. Petitioner shall keep this log in a separate file or ledger in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log or to make the log available for immediate inspection and copying on the premises is a violation of probation.

8. Prior to engaging in the practice of medicine, the petitioner shall provide a true copy of the decision and accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier that extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the board or its designee within 15 calendar days. This condition shall also apply to any changes in hospitals, other facilities, or insurance carrier.

9. During probation, petitioner is prohibited from supervising physician assistants.

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

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

12. Petitioner shall comply with all requirements of the board's probation unit. Petitioner shall, at all times, keep the board informed of petitioner's business and residence addresses. Changes of such addresses shall be communicated immediately in writing to the board or its designee.

13. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

14. Petitioner shall not engage in the practice of medicine in petitioner's place of residence. Petitioner shall maintain a current and renewed California physician's and surgeon's license.

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

16. Throughout the term of probation, petitioner shall be available in person for interviews either at petitioner's place of business or at the probation unit office, with the board or its designee on request at various intervals and either with or without prior notice.

17. In the event petitioner should leave the State of California to reside or to practice petitioner shall notify the board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which petitioner is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

18. All time spent in an intensive training program outside the State of California which has been approved by the board or its designee shall be considered time spent in the practice of medicine within the state. A board-ordered suspension of practice shall not be considered a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

19. Petitioner's license shall be automatically cancelled if petitioner's periods of temporary or permanent residence or practice outside California total two years. However,

petitioner's license shall not be cancelled as long as petitioner is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

20. In the event petitioner resides in the State of California and for any reason stops practicing medicine in California, petitioner shall notify the board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve petitioner of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which petitioner is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

21. All time spent in an intensive training program which has been approved by the board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

22. Petitioner's license shall be automatically cancelled if petitioner resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

23. Petitioner shall comply with all financial obligations not later than 120 calendar days prior to the completion of probation.

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

25. Following the effective date of this decision, if petitioner ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request the voluntary surrender of petitioner's license. The board reserves the right to evaluate petitioner's request and to exercise its discretion as to whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. On the board's formal acceptance of the surrender, petitioner shall, within 15 calendar days, deliver petitioner's wallet and wall certificate to the board or its designee, and petitioner no

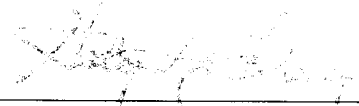
longer shall practice medicine. Petitioner will no longer be subject to the terms and conditions of probation and the surrender of petitioner's license shall be deemed disciplinary action. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

26. Petitioner shall pay the costs associated with probation monitoring each year of probation, as designated by the board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

27. On successful completion of probation, petitioner's certificate shall be fully restored.

This decision shall become effective at 5 p.m. on March 23, 2012.

IT IS SO ORDERED this 22nd day of February, 2012.



Hedy Chang, Chairperson
Panel B
Medical Board of California


Hedy Chang, Chairperson
Panel B

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

In the Matter of the Petition for
Reinstatement by:

HARI NARAYANA MA REDDY

Petitioner.

Case No. 27-2010-207068

OAH No. 2011031083

DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on July 21 and 22, 2011, in Riverside, California.

Harinder K. Kapur, Deputy Attorney General, appeared on behalf of the people of the State of California.

Gary Whittenberg, Attorney at Law, appeared on behalf of the petitioner, Hari Narayana Ma Reddy.

The record was closed on July 22, 2011.

SUMMARY

The issue is: Has petitioner shown by the most clear and convincing evidence that efforts made toward rehabilitation have been successful.¹

In this decision, it is found and determined that petitioner has made substantial progress toward rehabilitation and that it would not be contrary to the public interest for him to be given a probationary license subject to appropriate conditions.

¹ *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547.

FACTUAL FINDINGS

Licensure

1. On October 16, 1996, the Medical Board of California issued Physician's and Surgeon's Certificate Number A 56371 to the petitioner, Hari Narayana Ma Reddy.

2. Petitioner was born in India in 1953. He received his medical training in India and practiced there until 1995. He came to California and performed a three year residency from 1995 to 1998 at the San Bernardino County Medical Center. He was board certified in family practice in 1998. Petitioner earned a Master's degree in Business Administration from California State University, San Bernardino in 2001 and a Master's degree in Health Administration from La Verne University in 2005.

3. Petitioner has been married for 33 years. He and his wife have a daughter who is a physician practicing in Dallas, Texas.

4. In an accusation dated March 27, 2001, Ron Joseph, Executive Director of the Medical Board of California, alleged that petitioner had engaged in multiple acts of unprofessional conduct. Mr. Joseph amended the accusation twice. The second amended accusation was dated May 17, 2001. After a hearing, the board issued a decision revoking petitioner's license. The board's decision became effective on May 23, 2003.

5. At the time of the events leading to the revocation – 1997 through 1999 – petitioner was employed by the Desert Valley Medical Group and was practicing in Victorville. Petitioner's brother-in-law, Prem Reddy, owns Desert Valley Medical Group. Petitioner was arrested on criminal charges in 1999. At that time, he was suspended with pay by the group, and then, in April of 2000, he was terminated from employment. In January of 2001, he rejoined the group with restrictions that included a requirement that he have a chaperone present during the examination of female patients. Petitioner was terminated from the group when his license was revoked in May of 2003.

6. By a petition dated May 31, 2006, petitioner sought reinstatement of his license. After a hearing, the board issued a decision denying the petition. That decision became effective on February 25, 2008.

7. By a petition dated May 17, 2010, petitioner again seeks reinstatement of his license. That petition is the subject of the present proceeding.

Criminal Conviction

8. In addition to the administrative revocation of petitioner's license, he suffered a criminal conviction. He was arrested in 1999 on charges growing out of his having engaged in sexual misconduct with female patients. In April of 2002, petitioner entered into a negotiated plea agreement. Pursuant to the agreement, he was convicted of one count of battery, a misdemeanor. The conviction was on a plea of nolo contendere.

9. The court placed petitioner on supervised probation for 36 months. As conditions of probation, the court required petitioner to pay a fine of \$2,000, pay fees, have a chaperone present when he attended to female patients, perform 1000 hours of community service, and obtain counseling. Petitioner complied with these conditions; he performed his community service by teaching computer courses at a local library.

10. To satisfy one of the conditions of the criminal probation, petitioner received counseling from William Breer, a licensed clinical social worker and licensed marriage, family, and child counselor. From June 24 through October 21, 2002, petitioner attended eight counseling sessions. Mr. Breer summarized his treatment and impressions in a memorandum dated October 21, 2002. Mr. Breer noted that petitioner denied involvement in the incidents and feared that false allegations had been made by people who intended to file a lawsuit against him. Mr. Breer said petitioner worked diligently in the psychotherapy sessions, and Mr. Breer did not believe that petitioner was a pedophile. Mr. Breer also said that, whether these were false allegations or the events actually occurred, "I believe there is a cultural factor here." Mr. Breer explained that petitioner's friendly, easygoing approach with patients may "bring out conflicts in females with unresolved sexual issues. They can interpret friendliness as an invitation into sex or romance. I have helped Dr. Reddy spot that kind of situation and helped him develop techniques to keep such patients at proper distance. In a way it is sad that professionals have to conduct themselves this way; however, it is a reality of modern life."

11. In Mr. Breer's opinion, petitioner was a conscientious and competent physician. Mr. Breer wrote, "Prudence suggests he should not see female patients without a chaperone." Mr. Breer suggested that a mental health professional review the matter in two years to determine whether the requirement of a chaperone was still warranted. He said, "It would be a disservice to the community to end [petitioner's] ability to practice."

12. At the time of this therapy, petitioner had not accepted responsibility for his sexual misconduct. He was not truthful in describing the underlying events to Mr. Breer. Consequently, Mr. Breer's therapy did not effectively address petitioner's behavior. Mr. Breer appeared to have accepted petitioner's position that he was not responsible and that his patients were to blame.

Grounds for License Revocation

13. A hearing on the accusation to revoke petitioner's license was held in December of 2002 and March of 2003. The hearing was before Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings.

14. Judge Hewitt found as follows: During the period of 1997 through 1999, petitioner committed acts of sexual misconduct during his care and treatment of four female patients, one of whom was 16 years old. The revocation of petitioner's license was based on these acts of misconduct and on petitioner's criminal conviction. Judge Hewitt also found that the 16-year-old patient told petitioner that her father had sexually molested her, but petitioner, who was a mandated reporter, failed to report her allegation to the appropriate

authorities. Judge Hewitt determined that this was a further ground for revoking petitioner's license but that, because of the particular facts of the case, petitioner's failure to report was excused.

Evidence Presented in the Hearing on Petitioner's Earlier Petition for Reinstatement

15. A hearing on petitioner's 2006 petition for reinstatement of his license was held in November of 2007 and February of 2008. The hearing was before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings.

16. Petitioner presented evidence that, between June of 2005 and May of 2006, he completed 122.25 hours of Continuing Medical Education (CME). He presented evidence that, if the board reinstated his license, the Desert Valley Medical Group was prepared to have him rejoin the group.

17. Petitioner admitted that, in the past, he had been untruthful in denying the acts of sexual misconduct. Petitioner said he had come to accept responsibility for those acts. He said he had gone through a long healing process that, starting in January of 2007, included psychotherapy sessions with L. D. Miller, Ph.D.

18. Dr. Miller was licensed as a marriage and family therapist in 1979, received his doctorate in 1981, and was licensed as a clinical psychologist in 1983. He has extensive experience and training in clinical and forensic psychology.

19. Petitioner began therapy with Dr. Miller on January 8, 2007. Petitioner presented with signs of anxiety and depression concerning his effort to have his medical license reinstated and to re-enter the practice of medicine. Petitioner felt he had been mistreated due to misunderstandings. At their second session, petitioner gave Dr. Miller a copy of the board's decision revoking petitioner's license. At their third session, Dr. Miller confronted petitioner with the differences between what petitioner had told him and what Judge Hewitt had found. Dr. Miller concluded that petitioner demonstrated some denial, minimalization, and rationalization of his actions.

20. Petitioner told Dr. Miller about the continuing education courses he had attended. Dr. Miller asked whether petitioner had attended courses on ethics or the doctor and patient relationship. Petitioner had not. He decided to attend a course titled "Maintaining Proper Boundaries" given February 7 through 9, 2007, in Texas, sponsored by the Vanderbilt University School of Medicine and the Sante Center for Healing. Petitioner successfully completed that course. Petitioner stated that the course "really opened my eyes." There were group sessions, seminars, films, and exercises. Dr. Miller stated that, during their fourth therapy session, petitioner recognized that attending the seminar helped him to accept responsibility for his actions. Petitioner demonstrated new insights and understanding of the ways in which he had violated boundaries with his patients. As therapy continued, petitioner developed an understanding of the effects of his actions and developed empathy for his patients. Dr. Miller encouraged petitioner to focus on a doctor's duty to

provide an atmosphere of safety and trust. Dr. Miller encouraged petitioner to acknowledge his failure to discharge that duty.

21. Dr. Miller did not obtain any psychological testing.

22. Dr. Miller expressed his opinion that there were no indications that petitioner was a sexual predator and expressed his opinion that, if petitioner's license were reinstated, petitioner would not pose a risk to his patients.

23. Petitioner stated that he understood that his license was revoked because of his sexual misconduct with a number of patients, that he crossed the boundaries between doctor and patient, and that he touched patients inappropriately. He acknowledged that the allegations against him were not the result of any cultural differences and that he had not been misunderstood or misjudged.

24. Petitioner testified that he had experienced feelings of shame, guilt, and humiliation over his misconduct. He stated that the events had taken a toll on his relationship with his wife of 31 years and his relationship with his adult daughter. He said his conviction and license revocation significantly affected his relationships with friends and family.

25. The Office of the Attorney General engaged Mohan Nair, M.D., to review petitioner's evidence of rehabilitation. Dr. Nair is board certified in psychiatry, child and adolescent psychiatry, and forensic psychiatry. He also holds certifications in addiction medicine and clinical psychopharmacology. Dr. Nair received his graduate training in India and his post-graduate training at Harvard University, McLean Hospital/Massachusetts General Hospital, and the University of California at Irvine. He was licensed in California in 1979. Dr. Nair has extensive experience and training in clinical and forensic psychiatry.

26. Dr. Nair reviewed various documents, including the decision revoking petitioner's license, the Breer and Miller reports, Dr. Miller's progress notes, petitioner's narrative statement, and the investigator's report. Dr. Nair stated his opinion that petitioner had not received the type of therapy he needed. Dr. Nair listed several "Treatment Modules" that would be appropriate to treat someone with problematic sexual interests.

27. Dr. Nair said the evaluations provided by Mr. Breer and Dr. Miller lacked objectivity, inappropriately accepted petitioner's views of events, and tended to provide excuses for petitioner. He believed both therapists should have addressed the fact that people who engage in sexual misconduct can be deceitful and can suffer from cognitive distortions.

28. In Dr. Nair's opinion, petitioner needed intensive treatment focused on sexual behaviors – including objective testing, penile plethysmography, a polygraph, and relapse prevention follow up for at least two years.

The Board's Denial of Petitioner's 2006 Petition for Reinstatement

29. Judge Rosenman found that petitioner had failed to prove that his license should be reinstated. The board, adopting Judge Rosenman's decision, denied the petition. Judge Rosenman wrote:

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

It is commendable that Petitioner reached this point with benefit of some psychological counseling and coursework in proper professional boundaries. However, his recent acceptance must be viewed against the backdrop of a period of eight years or so during which he continued to deny any wrongdoing. Further, as Petitioner himself repeatedly acknowledged, rehabilitation can be a long, slow and gradual process. What is lacking is convincing evidence that Petitioner's recent revelations are sufficient to establish rehabilitation to the extent that re-licensure is appropriate at this time. All of the supporting evidence should be viewed in light of when Petitioner experienced his breakthrough, in February and March 2007. References and reports dated earlier, which attest to Petitioner's rehabilitation, are therefore entitled to lesser weight and credibility and are less convincing. Petitioner has not submitted evidence that he is sufficiently rehabilitated at this time. Petitioner's showing has not overcome the board's former adverse determination and, therefore, Petitioner has not established by clear and convincing evidence that his license should be reinstated at this time.

Petitioner's Completion of the Intensive Treatment Dr. Nair Recommended

30. On March 3, 2008, petitioner enrolled in a treatment program called Sex Offender Solutions (SOS). He completed that program on May 4, 2010.

31. Wesley B. Maram, Ph.D., is licensed as a psychologist in California. Dr. Maram founded SOS and continues to serve as the clinical director. Dr. Maram testified that he knows Dr. Naire, who testified in the earlier petition hearing. Dr. Maram said he has referred clients to Dr. Nair for psychotropic medication management and that Dr. Nair is very familiar with SOS.

32. In Dr. Nair's testimony concerning the treatment he believed petitioner needed, i.e., intensive treatment that focuses on sexual behaviors, Dr. Nair, in effect, described the components of SOS.

33. In SOS, petitioner participated in nine testing sessions and 75 treatment sessions. Dr. Maram's staff, under his direction, provided the testing and treatment. Dr. Maram directly participated in five evaluation and treatment sessions. An initial psychological assessment dealt with petitioner's mental state, treatment plan goals, and relapse prevention goals.

34. During the course of the SOS program, the following tests were administered: The Minnesota Multiphasic Personality Inventory (MMPI-2); polygraph testing on June 16, 2008, January 10, 2009, and October 31, 2009; penile plethysmograph (PPG) testing on May 28, 2008, and April 14, 2010; the Able Assessment for Sexual Interests (AASI-2) on May 28, 2008; the Substance Abuse Subtle Screening Inventory (SASSI-3); and the Clark Sex History Questionnaire for Males-Revised (SHQ-R)

35. Dr. Maram reported the following: The MMPI-2 was within normal range. However, it indicated personality characteristics of thrill seeking, impulsivity, proneness to rule infractions, and high-risk behavior. These characteristics may make the petitioner vulnerable to clashes with authority at times. The three administrations of the polygraph tests did not indicate that petitioner was engaging in any deception. The two administrations of the PPG reflected a heterosexual arousal pattern to adult females. The tests supported an interpretation of non-deviant arousal. The AASI-2 reflected a sexual interest pattern to female adolescents, male and female adults, and prepubescent males and females. However, a deviant arousal pattern to prepubescent children is not supported by documentary history, conclusions of the PPG results, or polygraph results. The SASSI-3 indicated a low probability of a substance dependence disorder. The SHQ-R provided information noted regarding other testing and indicated that petitioner is masculine identified with no feminine longings.

36. Dr. Maram also reported the following: Petitioner appeared for scheduled appointments and complied with his treatment contract. No warning letters were issued to him. Petitioner's response to group and individual treatment was consistently cooperative, and he demonstrated that he was learning relapse prevention skills. Initially, he appeared not to internalize concepts, and his involvement appeared to be superficial. Initially, he did not reveal a real depth of understanding. After this was brought to his attention and after some individual therapy sessions, his work improved substantially. His verbal involvement showed some improvement. He gained insight and identified past narcissistic feelings of entitlement as having lead to his offending behavior. Petitioner has a narcissistic personality

trait, but he does not have Narcissism as a diagnosable mental disorder. Petitioner developed an improved and more comprehensive relapse prevention plan that plotted realistic avoidance of high risk circumstances, escape strategies, and avoidance strategies. Petitioner has been consistent in taking full responsibility for his offensive behavior. He did not project blame on his victims. He did not employ minimization or justification for his misconduct.

37. Dr. Maram expressed the following opinions: Petitioner's progress has been good. He responded well to treatment. He does not suffer from a mental disorder that predisposes him to sexual crimes. Petitioner has been rehabilitated. He is unlikely to act out sexually again. Dr. Maram said that a risk assessment analysis supports these conclusions.

38. Since completing the SOS program in May of 2010, petitioner has returned for a few individual sessions with Dr. Maram.

Other Evidence of Petitioner's Progress Toward Rehabilitation

39. Petitioner made a motion pursuant to Penal Code section 1203.4, to have his conviction set aside and to have the case dismissed. On February 9, 2005, the court granted the motion.

40. Between April of 2010 and April of 2011, petitioner completed 51.5 hours of CME.

41. Since having his license revoked, petitioner has maintained gainful employment. For most of the time he has worked for the Desert Valley Medical Group as a clerk, auditor, and accounts collector. He has had no patient contact.

42. The following is a paraphrased summary of part of petitioner's testimony in the present proceeding: At the time of the hearing on my earlier petition for reinstatement, I was still working my way through the embarrassment and was still trying to blame others. I now acknowledge that what I did was wrong. I broke the trust of my patients. I feel terrible about it. I feel humiliated. Under the guise of providing medical care, I exploited patients for my own sexual interests. I was thinking only of myself. Looking back, I am disgusted with myself. I will live with the shame. In the SOS program, I gained insight into the thinking and feelings that led to my abusing patients. I had worked and studied diligently. I mistakenly came to feel that that entitled me to whatever I wanted – without regard to the consequences for other people. I now understand how wrong I was. I will never repeat such bad behavior.

43. Petitioner testified about his failure to report the 16-year-old girl's allegation that her father had molested her. Petitioner said, "If I had it to do over, I definitely would report."

44. Petitioner said his wife, his daughter, and family friends have been very supportive of his rehabilitation.

45. Petitioner said he has continued to see Dr. Maram after completing the SOS program because Dr. Maram is a good therapist and because there always is room to grow.

46. Petitioner said he has kept current in his field by attending CME courses. He said he has completed approximately 484 hours since 2005, and 130 of those have been since 2008. He said he also has regularly read the Journal of the American Medical Association and journals concerning family practice.

47. Petitioner was contrite.

References

48. Yash Paul Subherwal, M.D., is a board certified internist who practices with the Desert Valley Medical Group. He has known petitioner professionally since 1998. At some point, they became personal friends. They worked together at Desert Valley Medical Group until petitioner's license was revoked. Before petitioner's license was revoked, Dr. Subherwal and his family were petitioner's patients. Dr. Subherwal wrote a letter dated May 10, 2010, in support of petitioner's effort to have his license reinstated. Dr. Subherwal also testified. The following is a paraphrased summary of part of Dr. Subherwal's letter and testimony: I am fully aware of the matter of petitioner's license having been revoked because of a finding of sexual misconduct. Petitioner has always demonstrated sound medical knowledge and skills. He is a very good physician – very competent. I have attended a number of CME courses with petitioner and am of the opinion that petitioner has kept up to date with developments in his specialty. In 2007, petitioner began discussing his conviction with me. At that time, he did not accept responsibility for what he had done, but that has changed completely. He now fully accepts responsibility and is very remorseful. Originally, petitioner's concern was for his family and what he had put them through, but now his first priority is not to put his patients through bad behavior.

49. H. Rexford McDaniel, D.O., is a member of the American College of Osteopathic Medicine's Section on Obstetrics and Gynecology. He is board certified in obstetrics and gynecology. He and petitioner were residents at San Bernardino Medical Center in 1995 through 1998. Dr. McDaniel was the chief resident and, in that capacity, supervised petitioner. Dr. McDaniel now practices with the Desert Valley Medical Group. He wrote a letter dated May 10, 2010, in support of petitioner's effort to have his license reinstated. Dr. McDaniel also testified. The following is a paraphrased summary of part of Dr. McDaniel's letter and testimony: Petitioner was an excellent resident. He had extensive experience before we began our residency program, and he had excellent skills. Later, we began practicing together with the Desert Valley Medical Group. We referred patients to each other; my patients found petitioner to be exceptional. His sexual misconduct was a complete shock to me. But he is remorseful, and I believe he has been rehabilitated. If petitioner's license were reinstated, I would not hesitate to refer my patients to him. I would not hesitate to refer my daughters to him.

It is Likely that, if the Petition is Granted, Petitioner Will be able to Rejoin the Desert Valley Medical Group

50. Margaret R. Peterson, Ph.D., is the chief executive officer of the Desert Valley Hospital and the Desert Valley Medical Group. Dr. Peterson testified that she is aware of petitioner's offenses and the board's grounds for revoking his license. She said Desert Valley Medical Group has an opening for a family practice specialist and that, if petitioner's license is restored, she will recommend that the group hire petitioner. The group's credentialing committee has ultimate authority over the matter.

51. Dr. Peterson said the group has experience in dealing with physicians, nurses, and pharmacists who have been placed on probation in connection with substance abuse offenses, and she is confident they can provide vigilant supervision of petitioner. She said the credentialing committee would determine whether to impose restrictions over and above any conditions the board might place on petitioner's license.

Credibility

52. Petitioner was a very credible witness. He did not exaggerate. He responded to questions readily and with appropriate detail.

The Attorney General's Recommendation

53. The Deputy Attorney General, Ms. Kapur, appearing on behalf of the people of the State of California, recommended that the petition be granted and that petitioner be given a probationary license. Ms. Kapur also made recommendations concerning conditions of probation.

LEGAL CONCLUSIONS

Purpose of Physician Discipline

1. The purpose of the Medical Practice Act is to assure the high quality of medical practice. In furtherance of that goal, the board seeks to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

2. The purpose of administrative discipline is not to punish licensees but to protect the public by eliminating those practitioners who are dishonest, immoral, disreputable, or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

Standard of Proof

3. In a proceeding to restore a disciplined professional license, "the burden at all

times rests on the petitioner to prove that he has rehabilitated himself and is entitled to have his license restored, and not on the board to prove the contrary.” (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

4. “In seeking reinstatement, petitioner bears a heavy burden of proving rehabilitation. He must show by the most clear and convincing evidence that efforts made toward rehabilitation have been successful.” (*Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.)

Petitioner’s Rehabilitation

5. By reason of the matters set forth in Findings 16 through 24, 30 through 49, 52, and 53, it is determined that petitioner has proven by clear and convincing evidence that he has made substantial progress toward rehabilitation and that it would not be against the public interest for him to hold a probationary license subject to appropriate conditions.

6 The public interest requires that the conditions of probation include the board’s standard conditions and optional conditions as follows: A professional boundaries program, an oral or written examination, a psychiatric evaluation, and a third party chaperone.

7. In the present proceeding, no determination is made as to the adequacy of the “Maintaining Proper Boundaries” course petitioner attended on February 7 through 9, 2007. One of the conditions of probation will be that petitioner shall enroll in and complete a course in maintaining professional boundaries. The board’s designee can determine whether the course petitioner took was sufficient to satisfy that requirement.

ORDER

Certificate Number A 56371, formerly issued to the petitioner, Hari Narayana Ma Reddy, is reinstated. The certificate immediately is revoked. However, the revocation is stayed, and petitioner is placed on probation for three years on the following conditions.

1. Within 60 calendar days from the effective date of this decision, petitioner shall enroll in a professional boundaries program, at petitioner’s expense, equivalent to the Professional Boundaries Program, Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine (Program). Petitioner, at the Program’s discretion, shall undergo and complete the Program’s assessment of petitioner’s competency, mental health and/or neuropsychological performance, and at minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the decision, accusation, and any other information the board or its designee deems relevant. The Program shall evaluate petitioner at the end of the training, and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the board or its designee. Petitioner’s failure to complete the entire Program not later than six months after his initial enrollment

shall constitute a violation of probation unless the board or its designee agrees in writing to a later time for completion. Based on petitioner's performance in and evaluations from the assessment, education, and training, the Program shall advise the board or its designee as to whether there is a recommendation for additional education, training, psychotherapy, or other measures necessary to ensure that petitioner can practice medicine safely. Petitioner shall comply with Program recommendations. At the completion of the Program, petitioner shall submit to a final evaluation. The Program shall provide the results of the evaluation to the board or its designee. The Program's determination as to whether petitioner successfully completed the Program shall be binding. Failure to participate in and successfully complete all phases of the Program, as outlined above, is a violation of probation. If petitioner fails to complete the Program within the designated period, petitioner shall cease the practice of medicine within 72 hours after the board or its designee notifies him that he failed to complete the Program.

2. Within 60 calendar days of the effective date of this decision, petitioner shall take and pass an oral and/or written examination administered by the probation unit. The board or its designee shall administer the oral and/or written examination in a subject to be designated by the board or its designee, and the oral examination shall be audio tape recorded. If petitioner fails the first examination, petitioner shall be allowed to take a second examination, which may consist of an oral and/or written examination. The waiting period between the first and second examinations shall be at least 90 calendar days. Failure to pass the required oral and/or written examination within 180 calendar days after the effective date of this decision is a violation of probation. Petitioner shall pay the costs of all examinations. For purposes of this condition, if petitioner is required to take and pass a written exam, it shall be either the Special Purpose Examination (SPEX) or an equivalent examination as determined by the board or its designee. If petitioner fails to pass the first examination, petitioner shall be suspended from the practice of medicine. Petitioner shall cease the practice of medicine within 72 hours after the board or its designee notifies him that he has failed the examination. Petitioner shall remain suspended from the practice of medicine until petitioner successfully passes a repeat examination, as evidenced by written notice to petitioner from the board or its designee.

3. Within 30 calendar days of the effective date of this decision, and on whatever periodic basis thereafter that the board or its designee may require, petitioner shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a board-appointed, board certified psychiatrist, who shall consider any information the board or its designee provides and any other information the psychiatrist deems relevant. The psychiatrist shall furnish a written evaluation to the board or its designee. Psychiatric evaluations conducted prior to the effective date of this decision shall not be accepted towards the fulfillment of this requirement. Petitioner shall pay the cost of all psychiatric evaluations and psychological testing. Petitioner shall comply with all restrictions or conditions the evaluating psychiatrist recommends. Petitioner shall comply within 15 calendar days after the board or its designee notifies him that he must comply. Failure to undergo and complete a psychiatric evaluation and psychological testing or a failure to comply with required additional conditions or restrictions is a violation of probation.

4. During probation, petitioner shall have a third party chaperone present while consulting, examining, or treating female patients. Petitioner shall, within 30 calendar days of the effective date of this decision, submit to the board or its designee for prior approval the name or names of persons who will act as the third party chaperone. Each third party chaperone shall initial and date each patient medical record at the time the chaperone's services are provided. Each third party chaperone shall read the decision and the accusation and fully understand the role of the third party chaperone. Petitioner shall maintain a log of all patients seen for whom a third party chaperone is required. The log shall contain the: 1) patient name, address and telephone number; 2) medical record number; and 3) date of service. Petitioner shall keep this log in a separate file or ledger in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log or to make the log available for immediate inspection and copying on the premises is a violation of probation.

5. Prior to engaging in the practice of medicine, the petitioner shall provide a true copy of the decision and accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier that extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the board or its designee within 15 calendar days. This condition shall also apply to any changes in hospitals, other facilities, or insurance carrier.

6. During probation, petitioner is prohibited from supervising physician assistants.

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

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

10. Petitioner shall comply with all requirements of the board's probation unit. Petitioner shall, at all times, keep the board informed of petitioner's business and residence addresses. Changes of such addresses shall be communicated immediately in writing to the board or its designee.

11. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

12. Petitioner shall not engage in the practice of medicine in petitioner's place of residence. Petitioner shall maintain a current and renewed California physician's and surgeon's license.

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

14. Throughout the term of probation, petitioner shall be available in person for interviews either at petitioner's place of business or at the probation unit office, with the board or its designee on request at various intervals and either with or without prior notice.

15. In the event petitioner should leave the State of California to reside or to practice petitioner shall notify the board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which petitioner is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

16. All time spent in an intensive training program outside the State of California which has been approved by the board or its designee shall be considered time spent in the practice of medicine within the state. A board-ordered suspension of practice shall not be considered a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

17. Petitioner's license shall be automatically cancelled if petitioner's periods of temporary or permanent residence or practice outside California total two years. However, petitioner's license shall not be cancelled as long as petitioner is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

18. In the event petitioner resides in the State of California and for any reason stops practicing medicine in California, petitioner shall notify the board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve petitioner of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which petitioner is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

19. All time spent in an intensive training program which has been approved by the board or its designee shall be considered time spent in the practice of medicine. For

purposes of this condition, non-practice due to a board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

20. Petitioner's license shall be automatically cancelled if petitioner resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

21. Petitioner shall comply with all financial obligations not later than 120 calendar days prior to the completion of probation.

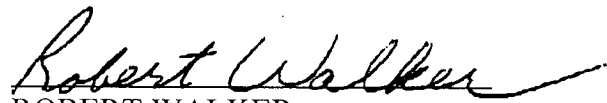
22. Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an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

23. Following the effective date of this decision, if petitioner ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request the voluntary surrender of petitioner's license. The board reserves the right to evaluate petitioner's request and to exercise its discretion as to whether to grant the request or to take any other action deemed appropriate and reasonable under the circumstances. On the board's formal acceptance of the surrender, petitioner shall, within 15 calendar days, deliver petitioner's wallet and wall certificate to the board or its designee, and petitioner no longer shall practice medicine. Petitioner will no longer be subject to the terms and conditions of probation and the surrender of petitioner's license shall be deemed disciplinary action. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

24. Petitioner shall pay the costs associated with probation monitoring each year of probation, as designated by the board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

25. On successful completion of probation, petitioner's certificate shall be fully restored.

Dated: August 5, 2011

A handwritten signature in black ink, appearing to read "Robert Walker", with a long, sweeping horizontal stroke extending to the right.

ROBERT WALKER

Administrative Law Judge

Office of Administrative Hearings