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

In the Matter of the Petition for Reinstatement of Revoked Certificate:	)	
NAGESH SHETTY	)	File No. 20-2005-165608
Physician's and Surgeon's Certificate No. A 33495	)	
Respondent	)	

DECISION

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

This Decision shall become effective at 5:00 p.m. on November 7, 2005

IT IS SO ORDERED October 6, 2005

MEDICAL BOARD OF CALIFORNIA

By: _____
Ronald L. Moy, M.D.
Chair
Panel B
Division of Medical Quality

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

In the Matter of the Petition for Reinstatement of the Revoked Certificate of: NAGESH SHETTY, Physician's and Surgeon's Certificate No. A 33495	Case No. 20-2005-165608 OAH No. L2005060503

PROPOSED DECISION

This matter came on regularly for hearing before Ralph B. Dash, Administrative Law Judge, Office of Administrative Hearings, on July 20, 2005, at Los Angeles, California.

Nagesh Shetty (Petitioner) was present and was represented by Robert J. Sullivan, Attorney at Law.

Pursuant to the provisions of Government Code Section 11152, Paul C. Ament, Deputy Attorney General, represented the Attorney General of the State of California.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Findings of Fact:

* * * * *

1. Petitioner was the holder of Physician's and Surgeon's Certificate Number A 33495, issued on February 26, 1979. By decision effective May 19, 2000, the Medical Board of California (Board) revoked said Certificate.

2. Petitioner's discipline resulted from the following Findings of the Board in Case No. 18-98-86655:

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

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

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

3. Petitioner did not attend the hearing which resulted in revocation of his Certificate as he was in prison at the time. In addition to the revocation, Petitioner was ordered to pay the Board the sum of $1,981.50 as and for the cost of investigation and prosecution of that matter. Petitioner has paid that sum in full. He has also paid the $40,000.00 fine, having borrowed money against his house to do so.

4. In his Petition, Petitioner disclosed that on December 7, 2000 (after the Board had revoked his Certificate), he was convicted, after trial in the United States District Court, Case No. SACR 98-105-GLT, on 26 counts of mail fraud in violation of 18 U.S.C. section 1341. The conviction was based on Petitioner's improper billing for his services during the years 1992 and 1994. He was sentenced to serve 24 months in prison for each count, with the sentences to run concurrently. He was also fined $4,000.00, ordered to pay restitution in the total sum of $47,260.55 and placed on supervised release for three years once his prison term ended. Petitioner served his prison sentence and, on December 6, 2004, completed his supervised release. He has paid the $4,000.00 fine. He still owes approximately $43,000.00 of restitution, which he is paying at the rate of $100.00 per month.

5. Petitioner was a board certified internist with a sub-specialty in cardiovascular medicine. The evidence convincingly established that Petitioner was well respected in the medical community "as a competent, caring and knowledgeable physician." Once released from prison, Petitioner resumed continuing medical education (CME). He earned 47 Category 1 CME credits in 2002, 30 Category 1 CME credits in 2003 and 53 Category 1 CME credits in 2004. In addition, he has attended numerous conferences and presentations, regularly reads numerous medical journals and has completed a medical ethics course. Between 2002 and the date of hearing, Respondent earned a total of 165 CME credits.

6. During the hearing of this matter, Petitioner expressed what appeared to be genuine remorse and regret for his past conduct. He was particularly embarrassed by the strains, both emotional and financial, his convictions put on his wife and four children, one of whom is now in medical school. Respondent currently works as a "service representative" at a local grocery store. His duties including bagging groceries, stocking shelves and

cleaning toilets. He earns $7.40 per hour, and has had to borrow money from his three brothers, as well as from friends, to support his family.

7. In support of his Petition, Petitioner offered substantial corroborative evidence of his competence and rehabilitation. Two well respected physicians testified regarding Petitioner's qualifications, unhesitatingly urging his reinstatement. Three former colleagues wrote letters of support. All five doctors had knowledge of Petitioner's criminal past, yet each felt Respondent should be permitted to resume practice. Petitioner himself acknowledged that while his competence as a physician had never been challenged, it would be prudent for him not to be in a solo practice, to be monitored, and not to have anything to do with billing patients. This was not an indication that Petitioner believed he would re-offend; rather it was his way of assuring the Board that if he were to be relicensed, the Board could satisfy itself that it was not placing the consumer at risk. In light of all of the evidence presented, the public safety would not be adversely affected by reinstatement of Petitioner's Certificate, provided it is conditioned as set forth below.

* * * * *

CONCLUSIONS OF LAW

1. The burden is on Petitioner to establish his rehabilitation and his fitness to practice medicine. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal. App. 2d 308.) The standard of proof is "clear and convincing evidence to a reasonable certainty." (*Hippard v. State Bar* (1989) 49 Cal. 3d 1084).

2. Cause exists to grant the Petition under the provisions of Business and Professions Code Section 2307, by reason of Findings 3 through 8.

* * * * *

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Petition is granted. Physician's and Surgeon's Certificate Number A 33495 issued to Nagesh Shetty is reinstated on the following terms and conditions:

Physician's and Surgeon's Certificate No. A 3349 issued to respondent[1] Nagesh Shetty is revoked; provided however, that the revocation is stayed and respondent is placed on probation for seven (7) years upon the following terms and conditions:

[1] For purposes of this Order, Petitioner is now referred to as "respondent."

Education Course

1. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, respondent shall submit to the Division or its designee for its prior approval educational programs or courses that shall not be less than 40 hours per year, for each year of probation. The educational programs or courses shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified, limited to classroom, conference, or seminar settings. The educational programs or courses shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Division or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

Ethics Course

2. Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a course in ethics, at respondent's expense, approved in advance by the Division or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation.

An ethics course 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 Division or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Division or its designee had the course been taken after the effective date of this Decision.

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

Clinical Training Program

3. 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).

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 specialty or sub-specialty, 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, Accusation, and any other information that the Division 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 Division 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. The Program's determination whether or not respondent passed the examination or successfully completed the Program shall be binding.

Respondent shall complete the Program not later than six months after respondent's initial enrollment unless the Division or its designee agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.

After respondent has successfully completed the clinical training program, respondent shall 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, which shall include 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, or until the Division or its designee determines that further participation is no longer necessary.

Failure to participate in and complete successfully the professional enhancement program outlined above is a violation of probation.

Monitoring

4. Within 30 calendar days of the effective date of this Decision, respondent shall submit to the Division or its designee for prior approval as a practice monitor, 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 Division, 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 Division or its designee shall provide the approved monitor with copies of the Decision and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, 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.

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.

The monitor shall submit a quarterly written report to the Division 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. The monitor shall also ascertain and report on Respondent's compliance with Condition 6 below.

It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Division 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 Division 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 days of the resignation or unavailability of the monitor, respondent shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of medicine within three (3) calendar days after being so notified by the Division or designee.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

Solo Practice

5. Respondent is prohibited from engaging in the solo practice of medicine.

No Billing

6. During the term of this probation, Respondent shall not engage in any form of patient or third party payer billing, except that Respondent may document, for purpose of billing by others, services Respondent has rendered.

Notification

7. Prior to engaging in the practice of medicine, respondent 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 respondent, at any other facility where respondent 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 which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Division or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

Supervision of Physician Assistants

8. During probation, respondent is prohibited from supervising physician assistants.

Obey All Laws

9. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

Quarterly Declarations

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

Probation Unit Compliance

11. Respondent shall comply with the Division's probation unit. Respondent shall, at all times, keep the Division informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Division or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of medicine in respondent's place of residence.

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the Division or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

Interview with the Division or its Designee

12. Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Division or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

Residing or Practicing Out-of-State

13. In the event respondent should leave the State of California to reside or to practice respondent shall notify the Division 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 respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Division or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as 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 respondent 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 and Probation Unit Compliance.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California totals two years. However, respondent's license shall not be cancelled as long as respondent 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.

Failure to Practice Medicine - California Resident

14. In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Division 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 respondent 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 respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Division 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.

Respondent's license shall be automatically cancelled if respondent 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.

Completion of Probation

15. Respondent shall comply with all financial obligations required under the terms of this probation not later than 120 calendar days prior to the completion of probation. Upon completion successful of probation, respondent's certificate shall be fully restored.

Violation of Probation

16. Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Division, after giving respondent 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 respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

License Surrender

17. Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Division reserves the right to evaluate respondent's request and to exercise its discretion

whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Division or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action.

If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

Probation Monitoring Costs

18. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Division, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Division 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.

Date: 9-13-05

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings