

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

**In the Matter of the Petition for)
Penalty Relief of:)**

ESMAIL NADJMABADI, M.D.)

Case No. 800-2017-037628

**Physician's and Surgeon's)
Certificate No. A56456)**

OAH No. 2019040679

**Petitioner)
_____)**

DECISION

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

This Decision shall become effective at 5:00 p.m. on December 13, 2019.

IT IS SO ORDERED November 15, 2019.

MEDICAL BOARD OF CALIFORNIA



**Kristina D. Lawson, J.D., Chair
Panel B**

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

In the Matter of the Petition for Penalty Relief of:

ESMAIL NADJMABADI, M.D., Petitioner

Agency Case No. 800-2017-037628

OAH No. 2019040679

PROPOSED DECISION

Carla L. Garrett, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on July 19, 2019, in Los Angeles, California.

Paul Spackman, Attorney at Law, represented Esmail Nadjmabadi, M.D. (Petitioner). Brenda P. Reyes, Deputy Attorney General, appeared pursuant to the provisions of Government Code section 11522.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 19, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A056456 to Petitioner on December 11, 1996. The certificate is renewed and current with an expiration date of December 31, 2020.

2. By its Decision effective July 22, 2015, pursuant to the Board's June 22, 2015 Decision and Order adopting the Proposed Decision of Administrative Law Judge H. Stuart Waxman, the Board reinstated Petitioner's surrendered Physician's and Surgeon's Certificate, immediately revoked the license, stayed the revocation, and placed Petitioner on probation for a period of seven years, subject to terms and conditions, including, but not limited to, undergoing a psychiatric examination and be deemed fit to practice, taking and passing an oral and/or written examination such as the Special Purpose Examination (SPEX), engaging in a non-solo practice, having a third party chaperone present while consulting, examining, or treating female patients, and submitting quarterly reports.

Underlying Misconduct

3. In 2006, the Board filed an Accusation against Petitioner alleging that he had engaged in acts in sexual misconduct with several female patients in 2005. Specifically, Petitioner remained in the examination room alone with patients as they disrobed, failed to provide the patients with gowns while they disrobed, performed examinations of patients that were not medically indicated, and touched patients.

inappropriately. The Board issued an interim suspension order restricting Petitioner's medical practice to male patients only.

4. In 2009, Petitioner suffered a conviction, pursuant to a plea of nolo contendere, of violating Business and Professions Code section 729, subdivision (b)(3), sexual exploitation by a physician. The Board filed an Amended Accusation on October 29, 2009, alleging sexual abuse and misconduct with respect to six female patients, as well as gross negligence and repeated acts of negligence with respect to all six patients. Alleged factors in aggravation in the Amended Accusation included soliciting dates from a patient; suffering discipline and subsequently resigning from his former employer, Kaiser Permanente, for sexual harassment of female employees; sexually harassing a convalescent home employee; engaging in sexual misconduct with employees in Petitioner's medical office; attempting to make one of the victims unavailable by reporting to immigration officials and the Internal Revenue Service that the victim and her husband were undocumented immigrants using false Social Security numbers; encouraging a female employee to lie to a police detective to protect Petitioner; asking his medical assistant to lie to protect him; and falsifying a medical record by indicating a medical assistant was present during the examination of a female patient when, in fact, she was not. Petitioner surrendered his license effective January 15, 2010.

Probation Compliance / Rehabilitation

5. Before the reinstatement of Petitioner's license in 2015, Petitioner completed two Professional Boundaries courses at the Physician Assessment and Clinical Education (PACE) program at the University of California at San Diego. He also underwent two evaluations (2006 and 2009) by Dr. John Flowers, who found no

indication of sexual pathology. Petitioner also completed a professionalism course with the Institute of Medical Quality with a longitudinal follow-up. Additionally, Petitioner completed more than 500 hours of community service and more than 450 hours of continuing medical education courses.

6. Petitioner also underwent a psychiatric evaluation by Kai MacDonald, M.D. and Giovanna Zerbi, Psy.D., who stated in their report that Petitioner "does not suffer from any psychological or psychiatric difficulties that would influence his ability to practice medicine safely and competently." (Exhibit 15, page 5.) Dr. Zerbi, with whom Petitioner had therapy sessions, stated that when she and Petitioner talked about what led to the events that ultimately cost him his license, "[Petitioner] exhibited good insight." (*Id.* at p. 8.) Dr. Zerbi also stated at Petitioner's 2015 reinstatement hearing that she did not recommend additional psychotherapy and that Petitioner had undergone an "enormous amount of maturation." (*Ibid.*)

7. After his reinstatement, Petitioner underwent a comprehensive psychiatric evaluation on July 27, 2015, performed by a psychiatrist selected by the Board, Leslie Brothers, M.D., as well as subsequent psychiatric evaluations performed on October 8, 2016, April 1, 2017, and August 24, 2017. In Dr. Brothers' final report, she expressed that over a two-year period, Petitioner has demonstrated:

[N]o evidence [of seeking] gratification from exploiting women, whether patients or staff. Rather, he has channeled his needs for self-esteem into healthy professional accomplishments, such as his disability reports and appeals. His ability to contribute to the practice as a valued member of the group is his foremost gratification now.

[¶. . .¶]

[Petitioner] is not a danger to himself, patients, or the public. He continues to be competent to practice medicine in that he is not impaired by mental or physical illness. He shows no tendencies to engage in inappropriate conduct towards patients or staff.

(Exhibit 17.)

8. On August 30, 2017, Dr. Brothers wrote a letter to the Board expressing support for Petitioner's petition for early termination of probation. Dr. Brothers stated the following:

[T]here are no psychological indications that [Petitioner] is at risk for repeating his past unethical behavior. In fact, I see the reverse: increasingly, his self-esteem has been rising as his competence in occupational medicine grows. It is evident that he takes pleasure in the esteem and in his success as disability appeals and other aspects of his practice. I believe the old dynamics, in which he was gratified by abusing his power, no longer exists. They have been replaced by healthy gratifications.

[¶. . .¶]

[I]t is my professional opinion that [Petitioner] has changed to the point where he is able to practice medicine without restrictions.

(Exhibit 4, pages 2-3.)

9. Petitioner also completed 10 psychotherapy sessions with Michael Musacco, Ph.D. from December 2015 through December 2016. Dr. Musacco wrote a letter to the Board on December 6, 2019 and stated the following:

[Petitioner] had demonstrated an awareness of the factors and problems which contributed to the behaviors resulting in the loss of his medical license. He has satisfactorily addressed these issues and it is my opinion that further treatment is not necessary as he does not pose a risk of harm to his patients.

(Exhibit 5.)

10. Susan Dvorak, a probation monitor for the Board who has monitored Petitioner since April 2016, testified at hearing. In the three years Ms. Dvorak has monitored Petitioner, she has met with Petitioner 14 times to ensure his compliance with his probation conditions. Ms. Dvorak reported that Petitioner has complied with all of the conditions of probation imposed by the Board, including undergoing a psychiatric examination and undergoing follow-up evaluations six and 12 months after his initial evaluation, per the recommendation of the evaluator, Dr. Leslie Brothers; undergoing 10 psychotherapy sessions over a period of 12 months; utilizing a third-party chaperone when examining female patients; taking and passing an oral/written examination; submitting quarterly declarations; paying his probation monitoring costs; and practicing medicine on a non-solo basis. At hearing, Ms. Dvorak announced her support of Petitioner's petition for early termination of probation, as she found Petitioner willing to do anything that the Board wanted him to do, and noted that Petitioner was "sincere and always respectful and humble and not the man alleged in the Accusation."

Character Evidence

11. Irene H. Sanchez, M.D., A.P.C., an internal medicine physician in Bakersfield, California, submitted a September 15, 2017 letter of reference on Petitioner's behalf. Dr. Sanchez, who has an occupational medicine practice, has been acquainted with Petitioner since he began working at her practice in 2015. Dr. Sanchez, as Petitioner's supervising physician, is aware of Petitioner's underlying conduct that led to the discipline of his license, as well as the conditions of his probation. Dr. Sanchez stated the following:

I am personally reassured that [Petitioner] has learned some priceless lessons through his experience over the past two years. He is remorseful and is willing to participate in every aspect of his recovery and he is doing everything required to amend his past actions.

[¶ . . .]

I am very encouraged by the prospect of [Petitioner] returning to the unrestricted practice of medicine because I know that the maturity level, empathy, transparency, and the utter respect for the doctor/patient relationship that he has fostered will be an asset to the practice of medicine and overall service to the patients that are sorely in need of these gifts. [Petitioner] has proven to withstand the scrutiny of his character with a good measure of humility and optimism. . . . He has transformed through his struggles that resulted in a highly valuable physician,

in this his contributions will undoubtedly result in relief of suffering, consolation of grief, reassurance of those in stressful circumstances, and encouragement to a population of patients living in our area which truly need him.

(Exhibit 2, pages 1-2.)

12. Dr. Rajeev Krishan, M.D., a board-certified gastroenterologist in Bakersfield, California, submitted a letter of reference on Petitioner's behalf. Dr. Krishan has known Petitioner for more than 17 years and is familiar with the events which led to the surrender of his license in 2010. Dr. Krishan stated the following:

[Petitioner] is an excellent physician with sound clinical acumen and has learned some priceless lessons in the past few years. He has endured hardships and difficulties and has learned from his past mistakes. He has remained active in the community and attends CME conferences and lectures and keeps himself up to date with the medical literature. He has expressed remorse and grief for the past actions and is sincere about being more conscientious physician and a better person. He is a family man and is very dedicated to them.

I am very encouraged by the prospect of [Petitioner] returning to practice without restrictions, as he has changed and matured since the events of the past. He has gained much empathy and sincerity since and has made up for the past action in the way of courses via the PACE program and ethical courses as well as counseling sessions with a psychologist and psychiatrist. He has also fully complied with

all of his probationary terms, which I have read. [Petitioner] is a great asset to our medical community in Bakersfield and I am looking forward to his return as a practicing physician with an unrestricted medical license. He is currently working in Occupational Medicine and is doing very well.

(Exhibit 3.)

13. Based on all of the clear and convincing evidence adduced at the hearing, the chance of any "recidivism" by Petitioner is very low. The public interest would not be put at risk by terminating his probation before it is due to expire by its own terms.

LEGAL CONCLUSIONS

STATUTORY AUTHORITY

1. Business and Professions Code section 2307 provides, in part:
 - (a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.
 - (b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

- (1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.
- (2) At least two years for early termination of probation of three years or more.
- (3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.
- (c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.
- (d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.
- (e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner

was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.

REGULATORY AUTHORITY

2. California Code of Regulations, title 16, section 1360.2

provides in part:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

- (a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial

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

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

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

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

THE BURDEN AND STANDARD OF PROOF

3. In a proceeding to restore a disciplined professional license or a petition for penalty relief, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored or be relieved from further requirements of probation. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

4. A person seeking reinstatement or penalty relief must present strong proof of rehabilitation and a sufficient showing of rehabilitation to overcome the Board's former adverse determination. (*Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.)

5. The standard of proof is clear and convincing evidence. (*Hippard v. State Bar of California, supra*, 49 Cal.3d at p. 1092.)

RELEVANT FACTORS IN DETERMINING REHABILITATION

6. Petitioner has no other disciplinary record, which is a mitigating factor. (*Segretti v. State Bar of California* (1976) 15 Cal.3d 878, 888.)

7. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Petitioner has complied with all terms of his probation.

CAUSE EXISTS TO GRANT THE PETITION AND TO TERMINATE PROBATION

8. Petitioner's conduct has been exemplary since the Board imposed discipline after he surrendered his license in 2010 and since reinstatement of his license in 2015, and the record shows that nearly 15 years have elapsed since he engaged in the misconduct that gave rise to his license surrender. Additionally, Petitioner has demonstrated himself to be a competent, highly regarded physician. Respect within the medical community evidences that he is well along in the process of rehabilitation. (See *In re Dedman* (1976) 17 Cal.3d 229, 234.) Additionally, the evidence shows that Petitioner has complied with all of the conditions of his probation. Petitioner's impact on the public, and whether he poses a danger to it, is given maximum consideration. In that regard, Petitioner has demonstrated clearly and convincingly that the public would be in no danger if his probation were terminated.

9. Given the above, cause exists under Business and Professions Code section 2307 and California Code of Regulations, title 16, section 1360.2, to grant the petition and terminate the Board's probation.

ORDER

The petition of Esmail Nadjmabadi, M.D., for termination of probation is granted. Physician's and Surgeon's Certificate Number A56456 is fully restored.

DATE: August 6, 2019

DocuSigned by:

Carla L. Garrett

CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearings