

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

In the Matter of the Accusation)
Against:)

GORLI HARISH, M.D.)
412 McKinley Avenue)
Charleston, WV 25314)

Physician's and Surgeon's)
Certificate No. A41095)

Respondent.)

No. D-5614

OAH No. N-9702006


MBC No. 16-93-29628

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on June 30, 1997.

IT IS SO ORDERED May 30, 1997.



Ira Lubell, M.D., Chair, Panel A
Division of Medical Quality

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Respondent.)	

PROPOSED DECISION

On April 7, 1997, in Sacramento, California, Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Fred A. Slimp II, Deputy Attorney General, represented the complainant.

Respondent was present and was represented by Nisar A. Kalwar, Attorney at Law, P.O. Box 706, 1141 Grosscup Avenue, Dunbar, WV 25064.

Evidence was received, the hearing was closed and the record was held open for receipt of an amended accusation in this matter. The First Amended Accusation was received on April 9, 1997 and was made part of Exhibit 1 in evidence for jurisdictional purposes. Thereupon, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Complainant Ronald Joseph is the Executive Director of the Medical Board of California ("the California Board") and filed the First Amended Accusation against Gorli Harish, M.D. ("respondent") solely in his official capacity.

The Accusation originally filed in this matter on January 20, 1994 was amended at hearing to conform to proof and to reflect events which had taken place since the filing of the original Accusation. The First Amended Accusation, which was filed on April 8, 1997, memorialized the amendments which were made at hearing.

Respondent was given a full opportunity to address the matters raised in the First Amended Accusation. Respondent waived his right to a continuance which might otherwise have been granted pursuant to Government Code section 11507 to give respondent a reasonable opportunity to prepare a defense to the additional allegations of the First Amended Accusation.

II

On August 13, 1984, respondent was issued Physician's and Surgeon's Certificate No. A41095 by the California Board. Said certificate will expire, unless renewed, on September 30, 1997.

III

Business and Professions Code section 2234 provides that the Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct.

Business and Professions Code section 2305 provides that the revocation, suspension or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state that would have been grounds for discipline of a California licensee shall constitute unprofessional conduct against such licensee in California.

Business and Professions Code section 125.3 provides, in part, that the California Board may request the administrative law judge to direct any licentiate found to have committed a violation or violations of the licensing act, to pay the California Board a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

IV

On June 4, 1993, respondent and the West Virginia Board of Medicine ("the West Virginia Board") entered into a stipulated agreement placing restrictions and conditions on respondent's medical license ("1993 Consent Agreement"). The West Virginia Board's action was based on three civil malpractice claims which had been filed against respondent. The West Virginia Board required respondent to successfully complete a mini-residency of a minimum duration of 50 hours by December 1, 1993. The West Virginia Board further required respondent to provide to the West Virginia Board any and all quality of care and peer reviews and assessments pertaining to him from any hospital where respondent enjoys staff privileges, for a period of two years, ending June 15, 1995. Respondent was further ordered to review materials provided to him by the West Virginia Board relating to maintaining adequate medical records and to provide a copy of the West Virginia Board's Order to any current or prospective employer or health care or medical facility where respondent was practicing or sought to practice medicine.

The effective date of the 1993 Consent Order was June 4, 1993. A true and correct copy of the 1993 Consent Order is attached as Exhibit A and incorporated by reference as if set forth in full.

At respondent's request, the West Virginia Board modified respondent's probation by substituting an ACOG Personalized Education Program ("PEP") for the 50 hour mini-residency originally ordered. Respondent successfully completed the PEP in July 1995, and he fully complied with all other terms and conditions of the 1993 Consent Order, including two years of quality of care and peer reviews.

V

On May 23, 1994, respondent and the West Virginia Board entered into an Agreement placing restrictions, conditions and limitations on respondent's West Virginia medical license based on respondent's admission of alcohol dependence and need for and participation in treatment for said dependence ("1994 Agreement"). The 1994 Agreement specifically stated that no written complaint or other report had been received or filed with the West Virginia Board regarding respondent relating to an alcohol or chemical dependency impairment affecting the care and treatment of patients. While the 1994 Agreement was not deemed under the provision of West Virginia Code section 30-3-9(h) to be of a disciplinary nature, the 1994 Agreement specifically stated that the West Virginia Board may cooperate with and provide

documentation of the Agreement to licensing boards in other jurisdictions, and that the action of the West Virginia Board limiting respondent's license would be reported to the National Practitioner Data Bank, as required by law.

Under the 1994 Agreement, respondent's West Virginia medical license was subject to conditions and limitations for a three year period, commencing June 1, 1994 and terminating June 1, 1997. The conditions and limitations include abstention from the use of any alcohol; submission to random fluid testing at respondent's expense; participation in a specific out-patient alcohol/substance addiction program, with written reports to be filed by the program coordinator, Dr. Ralph Smith; medical coverage for respondent and respondent's patients by other specified practitioners during respondent's participation in the out-patient program; and notification to any of respondent's employers or health care or medical facilities of the terms of the Agreement.

The effective date of the 1994 Agreement was May 23, 1994. A true and correct copy of the 1994 Agreement is attached as Exhibit B and incorporated by reference as if set forth in full.

VI

Respondent complied with some of the terms of the 1994 Agreement, including participation in a six-month out-patient treatment program. Respondent abstained from the consumption of alcohol until around October or November 1995. According to respondent, he had arranged for weekend coverage of his medical practice in the fall of 1995, so he began drinking again. Respondent admitted that, by resuming the consumption of alcohol, he was in violation of the terms and conditions of the 1994 Agreement. The West Virginia Board became aware of respondent's relapse into the use of alcohol in January 1996.

VII

On February 23, 1996, respondent surrendered his West Virginia medical license in order to receive treatment for alcohol dependence. On February 28, 1996, respondent was admitted for treatment to the William J. Farley Center in Williamsburg, Virginia ("the Farley Center"). Respondent completed the in-patient treatment program on May 17, 1996, and he entered into a Continuing Care Contract with the Farley Center on May 16, 1996, which outlined an out-patient aftercare program for respondent. He thereafter applied to the West Virginia Board for reinstatement of his license. Respondent's West Virginia medical license was reinstated pursuant to an order of the West

Virginia Board on July 25, 1996, subjecting respondent's West Virginia license to additional restrictions, conditions and limitations ("1996 Consent Order").

Under the terms of the 1996 Consent Order, respondent's West Virginia medical license was reinstated effective August 1, 1996 and was immediately revoked; the revocation was stayed and respondent was placed on probation for two years, subject to various terms and conditions. During the two year probationary period, respondent was to practice only with the supervision of another licensed physician approved by the West Virginia Board, with written reports to the West Virginia Board every 60 days. Respondent was further ordered to meet with a Board-approved physician who was to act as respondent's recovery monitor, with written reports to be filed every 60 days. Respondent was ordered to comply with the provisions of the Continuing Care Contract with the Farley Center. He was to refrain from the use of alcohol; document attendance at Alcoholics Anonymous ("AA") meetings; maintain a sponsor in AA; and submit to random fluid testing at his own expense. Respondent was to provide a copy of the 1996 Consent Order to his approved recovery supervising physician, his approved monitoring physician, and any employer or health care or medical facility where respondent is or will be practicing medicine and surgery in the State of West Virginia.

The 1996 Consent Order is due to expire, unless modified by the parties, on July 31, 1998. A true and correct copy of the 1996 Consent Order is attached as Exhibit C and incorporated by reference as if set forth in full.

VIII

By reason of the facts set forth in Finding IV, V and VII above, disciplinary action, restriction and/or limitation has been imposed by another state upon respondent's license or certificate to practice medicine issued by that state that would have been grounds for discipline of a California licensee, thereby constituting unprofessional conduct within the meaning of Business and Professions Code section 2305.

IX

Respondent is licensed to practice medicine in California, West Virginia, North Carolina and Georgia. Respondent's North Carolina license is active and has not been subject to any disciplinary action. Respondent's Georgia license is inactive and has not been renewed since 1994.

Respondent was board certified in obstetrics and gynecology by the American Board of Obstetrics & Gynecology

("ABOG") in 1982. Although respondent has lifetime board certification, respondent took and successfully completed the voluntary recertification evaluation process administered by ABOG on June 26, 1995.

X

Respondent is complying with the terms of the 1996 Consent Order to the West Virginia Board. Respondent has been sober since February 24, 1996. Respondent is following the recovery program outlined in his Continuing Care Contract, which is based on the 12 steps of AA. Respondent attends a minimum of three AA meetings per week, and he meets frequently with his sponsor. Respondent has completely abstained from the use of alcohol and has undergone random testing for alcohol use. Respondent also attends a monthly meeting of Caduceus, a national organization for professionals with substance abuse problems.

Respondent is married and has two children in college. Respondent lives with his wife and his parents. Respondent is in solo private practice in West Virginia.

XI

Respondent contends that the current restrictions and conditions on his West Virginia license are sufficient to protect the public and that no restrictions are necessary for his California license, inasmuch as respondent has no present intention to practice medicine in California. Respondent requests an order stating that, if he completes all requirements of his West Virginia probation and has no problems for a year thereafter, he should be permitted to come to California to live and practice medicine without restrictions.

Respondent's contention is not persuasive. As was noted in the case of Marek v. Board of Podiatric Medicine (1993) 16 Cal.App.4th 1089, at p. 1099, the California Board has broad discretion to impose a disciplinary order, and "California is entitled to protect its citizens and to ensure the high quality of medical practice" in this state. The California Board is entitled to take whatever disciplinary action it deems appropriate to protect the public and is not limited to the type of action taken by the West Virginia Board.

Under all of the circumstances herein, it would not be contrary to the public interest to permit respondent to retain his California medical license, with appropriate terms and conditions of probation.

XII

The costs of the investigation and prosecution of the proceeding herein incurred by the California Board were \$1,611 as of the date of hearing.

DETERMINATION OF ISSUES

I

Clear and convincing evidence established cause for revocation of respondent's physician's and surgeon's certificate pursuant to Business and Professions Code sections 2234 and 2305 by reason of Findings IV, V, VII and VIII.

II

The matters set forth in Findings VI and IX-XI are considered in making the Order below.

III

Pursuant to Business and Professions Code section 125.3 the costs of the investigation and prosecution of the case shall be awarded to the California Board in the amount of \$1,611 by reason of Finding XII.

ORDER

Physician's and Surgeon's Certificate No. A41095 issued to respondent Gorli Harish, M.D. is revoked pursuant to Determination of Issues I. However, said revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions. Respondent shall give the California Board at least 60 days written notice prior to his return to California to practice medicine in this state. Within 15 days after the effective date of this decision, respondent shall provide the Division, or its designee, proof of service that respondent has served a true copy of this decision on the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent or where respondent is employed to practice medicine and on the Chief Executive Officer at every insurance carrier where malpractice insurance coverage is extended to respondent.

1. Respondent shall take and pass an oral clinical exam in the field of obstetrics and gynecology to be administered by the Division, or its designee. This examination shall be taken within 90 days after the effective date of this decision. If

respondent fails the first examination, respondent shall be allowed to take and pass a second examination, which may consist of a written as well as an oral examination. The waiting period between the first and second examinations shall be at least three months. If respondent fails to pass the first and second examinations, respondent may take a third and final examination after waiting a period of one year. Failure to pass the oral clinical examination within 18 months after the effective date of this decision shall constitute a violation of probation. The respondent shall pay the costs of all examinations.

2. If respondent fails to pass the first oral clinical examination, respondent shall be suspended from the practice of medicine until a repeat examination has been successfully passed, as evidenced by written notice to respondent from the Division or its designee.
3. Within 30 days of the effective date of this decision, respondent shall submit to the Division or its designee for its prior approval a plan of practice in which respondent's practice shall be monitored by another physician in respondent's field of practice, who shall provide periodic reports to the Division or its designee.

If the monitor resigns or is no longer available, respondent shall, within 15 days, move to have a new monitor appointed, through nomination by respondent and approval by the Division or its designee.

4. Respondent shall abstain completely from the use of alcoholic beverages, and shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by Section 4211 of the Business and Professions Code, or any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.
5. Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the Division or its designee.

6. Within 30 days of coming to California to reside and/or practice medicine, respondent shall report to the Division's Diversion Evaluation Committee ("DEC") and shall enroll and participate in the Division's Diversion Program if ordered to do so by the DEC. Respondent shall remain in the Diversion Program until the Division determines that further treatment and rehabilitation is no longer necessary. Quitting the program without permission or being expelled for cause shall constitute a violation of probation by respondent.

Respondent shall not engage in the practice of medicine in California until notified by the DEC of its determination that respondent is able to practice safely.

7. 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.
8. 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.
9. Respondent shall comply with the Division's probation surveillance program. Respondent shall, at all times, keep the Division informed of his or her addresses of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the Division. Under no circumstances shall a post office box serve as an address of record.

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

10. Respondent shall appear in person for interviews with the Division, its designee or its designated physician(s) upon request at various intervals and with reasonable notice.
11. In the event respondent should leave California to reside or to practice outside the State or for any reason should respondent stop practicing medicine

in California, respondent shall notify the Division or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Business and Professions Code sections 2051 and 2052. All time spent in an intensive training program approved by the Division or its designee shall be considered as time spent in the practice of medicine. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary period.

12. Respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Division at the end of each fiscal year. Failure to pay such costs shall be considered a violation of probation.
13. Respondent shall comply with all of the terms and conditions set forth in the 1996 Consent Order of the West Virginia Board of Medicine as set forth in Exhibit C attached hereto. Any violation of the 1996 Consent Order shall be deemed a violation of respondent's probation herein.
14. Respondent may petition for modification or termination of penalty (A) if the terms of the West Virginia Board's disciplinary order are modified, terminated or reduced; and (B) if at least one year has elapsed from the effective date of the California discipline.
15. Upon successful completion of probation, respondent's certificate shall be fully restored.
16. 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 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.

17. The respondent is hereby ordered to reimburse the Division the amount of \$1,611 within 90 days from the effective date of this decision for its investigative and prosecution costs. Failure to reimburse the Division's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Division agrees in writing to payment by an installment plan because of financial hardship. The filing of bankruptcy by the respondent shall not relieve the respondent of his/her responsibility to reimburse the Division for its investigative and prosecution costs. The payment of costs shall be exempt from any tolling provision to which respondent might otherwise be subject.
18. 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 voluntarily tender his/her certificate to the Board. The Division reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

Dated: May 9, 1997

Catherine B. Frink
CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings