

**STATE OF MICHIGAN
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF HEARINGS**

In the matter of

Docket No. 2001-636

**Edwin Clark Weathington, MD,
Petitioner**

Agency No. 43-01-0757-00

v

Agency: Bureau of Health Services

**Bureau of Health Services,
Respondent**

**Case Type: Appeal
Reinstatement**

_____ /

**Issued and entered
this 9th day of August, 2001
by Stephen B. Goldstein
Administrative Law Judge**

PROPOSAL FOR DECISION

This matter was properly noticed for a hearing to commence at 9:00 A.M., on July 16, 2001 in the hearing rooms of the Michigan Department of Consumer and Industry Services, Bureau of Hearings, Ottawa Building, 2nd Floor, 611 West Ottawa, Lansing, Michigan.

Stephen B. Goldstein presided as Administrative Law Judge.

Ms. Amy Rosenberg, Assistant Attorney General, appeared on behalf of the Bureau of Health Services (Respondent)

Mr. George M. Brookover and Ms. Diane S. Carr, Attorneys at Law, appeared on behalf of Edwin Clark Weathington, M.D. (Petitioner).

SUMMARY OF PROCEEDINGS:

This matter commenced with the filing by Petitioner of an Application for Reinstatement of his medical license dated April 4, 2001. On May 2, 2001, Respondent filed its Response in Opposition to Application for Reinstatement.

On May 11, 2001, a Notice of Hearing was issued and entered, scheduling a reinstatement hearing to commence at 9:00 A.M. on June 21, 2001. Due to a conflict in this Judge's schedule, the June 21, 2001 hearing had to be adjourned. Therefore, on May 30, 2001, an Order Granting Adjournment was issued and entered, rescheduling the reinstatement hearing to commence at 9:00 A.M. on July 16, 2001.

The July 16, 2001 hearing commenced as scheduled, and concluded the same day.

ISSUES AND APPLICABLE LAW:

The general issue presented is whether Petitioner has satisfied the requirements for reinstatement of his medical license.

The specific issue presented is whether Petitioner has satisfied the requirements set forth under Section 16247 of the Public Health Code (Code), 1978 PA 368, as amended; MCL 333.1101 et seq; MSA 14.15 (1101) et seq for reinstatement of his license. That Section of the Code provides in pertinent part as follows:

“Sec. 16247. (1) A board or task force may reinstate a license or issue a limited license to an individual whose license has been suspended or revoked under this part if after a hearing the board or task force is satisfied by clear and convincing evidence that the applicant is of good moral character, is able to practice the profession with reasonable skill and safety to patients, has met the criteria in the rules promulgated under section 16245(6), and should be permitted in the public interest to resume practice. Pursuant to the rules promulgated under section 16245(6), as a condition of reinstatement, a disciplinary subcommittee, upon the recommendation of a board or task force, may impose a disciplinary or corrective measure authorized under this part and require that the licensee attend a school or program selected by the board or task force to take designated courses or training to become competent or proficient in those areas of practice in which the board or task force finds the licensee to be deficient. The board or task force may require a statement on a form approved by it from the chief administrator of the school or program attended or the person responsible for the training certifying that the licensee has achieved the required competency or proficiency.

(2) As a condition of reinstatement, a board or task force shall place the licensee on probation for 1 year under conditions set by the board or task force. If a licensee whose license has been revoked cannot apply for reinstatement for 5 years after the date of revocation, then, as a condition of reinstatement, the board or task force shall require the licensee to take and pass the current licensure examination.

(3) A board or task force shall not reinstate a license suspended or revoked for grounds stated in section 16221(b)(i), (iii), or (iv) until it finds that the licensee is mentally or physically able to practice with reasonable skill and safety to patients. The board or task force may require further examination of the licensee, at the licensee's expense, necessary to verify that the licensee is mentally or physically able. A licensee affected by this section shall be afforded the opportunity at reasonable intervals to demonstrate that he or she can resume competent practice in accordance with standards of acceptable and prevailing practice.”

SUMMARY OF EXHIBITS:

Petitioner Exhibit 1 is a copy, with attachments, of Petitioner's Application for Reinstatement of Suspended License, dated April 4, 2001.

Petitioner Exhibit 2 is a copy of a Certificate of Appreciation presented to Petitioner from the Lansing City Rescue Mission.

Petitioner Exhibit 3 is a copy of a letter from Cheryl Hayes, Director of Volunteer Efforts, to Petitioner dated January 30, 2001.

Petitioner Exhibit 4 is a copy of a document produced by the American College of Obstetricians and Gynecologists which shows that Petitioner completed 50 hours of Category I Continuing Medical Education as of 12/30/2000.

Petitioner Exhibit 5 is a copy of document entitled, "Prolog Objectives".

Petitioner Exhibit 6 is a copy of a letter from Jill Weaver, Registrar, Medical Information Systems, Inc., to Petitioner, dated February 13, 2001. The letter consists of a list of subjects and hours of continuing education credit that Petitioner completed during the year 2000.

Petitioner Exhibit 7 is a copy of a July, 1999 publication by the American College of Obstetricians and Gynecologists, entitled, "Breast Cancer Prevention."

Petitioner Exhibit 8 is a copy of a July, 2000 publication by the American College of Obstetricians and Gynecologists, entitled, "Contraception."

Petitioner Exhibit 9 is a March 28, 2001 letter from Lynn Galligan, Administrative Associate, The National Center on Addiction and Substance Abuse at Columbia University, to Diane Carr. The letter indicates that Petitioner attended a January 23, 2001 conference entitled, "*Food for Thought: Substance Abuse and Eating Disorders.*"

Petitioner Exhibit 10 is a course outline for the course described under Petitioner Exhibit 9 above.

Petitioner Exhibit 11 is a copy of the Affidavit of Edwin C. Weathington, M.D., dated March 13, 2001.

Petitioner Exhibit 12 is a copy of a Certificate of Completion for a course offered by the Texas Medical Association Committee on Physician Health and Rehabilitation entitled, "*Maintaining Professional Boundaries and Treating Difficult Patients.*"

Petitioner Exhibit 13 is a copy of a course outline for the course described under Petitioner Exhibit 12 above.

Petitioner Exhibits 14 and 15 - neither offered nor admitted.

Petitioner Exhibit 16 is a copy of a document compiled by Petitioner entitled, *“Personal-Professional Guidelines of Dr. Weathington Regarding the Documentation of Patient Use of Medications and the Dispensing or Prescribing of Medications Including the Use of Samples.”*

Petitioner Exhibit 17 is a copy of a document compiled by Petitioner entitled, *“Personal-Professional Guidelines of Dr. Weathington Regarding the Maintenance of Boundaries in the Doctor-Patient Relationship.”*

Petitioner Exhibit 18 is a copy of an Affidavit of Ron Nichols, M.D., dated March 23, 2001.

Petitioner Exhibit 19 is a copy of the Curriculum Vitae of Ronald A. Nichols, M.D., M.P.H.

Petitioner Exhibit 20 is a copy of an Affidavit of Brenda S. Eaton, M.D., dated March 23, 2001.

Petitioner Exhibit 21 is a copy the Curriculum Vitae of Brenda S. Eaton, M.D.

Petitioner Exhibit 22 is a copy of an Affidavit of Hugh Barrington Clarke, Jr., dated March 14, 2001.

Petitioner Exhibit 23 is a copy of an Affidavit of Judith L. Brown Clarke, dated March 13, 2001.

Petitioner Exhibit 24 is a copy of an Affidavit of Glynda Moorer, M.D., dated March 30, 2001.

Petitioner Exhibit 25 is a copy of the Curriculum Vitae of Glynda A. Melonson Moorer, M.D.

Petitioner Exhibit 26 is the original transcript of proceedings for the deposition of Ira Combs, Jr., taken on June 18, 2001.

FINDINGS OF FACT:

On February 26, 1999, a First Superseding Administrative Complaint was filed by Respondent against Petitioner, alleging that Petitioner had violated Sections 16221(a), (b)(i), (b)(vi), (c)(iv), (d)(iii), 7303a(2) and 7334(4)(c) of Michigan's Public Health Code, 1978 PA 368, as amended; MCL 333.1101 *et seq*; MSA 14.15(1101) *et seq*.

An administrative hearing was conducted before the Hon. Barbara A. Stump, Administrative Law Judge. On April 17, 2000, Judge Stump issued a Proposal for Decision, finding Petitioner to have violated Sections 16221(a), (b)(i), (b)(vi) and (d)(iii).

By Final Order dated June 16, 2000, and effective July 16, 2000, Petitioner's license to practice medicine was suspended for a period of six (6) months and one (1) day by the Michigan Board of Medicine Disciplinary Subcommittee (Board). Petitioner was also assessed a civil fine in the amount of \$5,000.00.

Dr. Brenda Surae Eaton, M.D. testified on behalf of Petitioner that she is a licensed Michigan physician, and that she's been employed by Sparrow Hospital for the past 14 years. She was born and raised in the Lansing area, and received her medical degree from Michigan State University. She is also a member of both the Michigan and American Medical Associations.

Dr. Eaton testified she first met Petitioner during her residency at Sparrow Hospital approximately 13 years ago. Since that time, she has maintained a professional, but no social relationship with him. She also indicated she was a patient of Petitioner during the time he was licensed.

Dr. Eaton testified that, prior to Petitioner's suspension, she routinely referred patients to him, and that, if he's relicensed, will resume this practice. She believes Petitioner is still an excellent physician, and that his patients really like him due to his "down to earth" approach to caring for them.

Dr. Eaton further testified that, during the time she was his patient, Petitioner hugged her but never when she was dressed in a patient gown, nor did he ever make remarks which she thought were inappropriate or which made her uncomfortable. She added that Petitioner never engaged her in conversations which made her uncomfortable.

Dr. Eaton opined that Petitioner is presently of good moral character, that he has the present ability to practice medicine with skill and safety, and that it would be in the public interest to have his license reinstated. She indicated that, of all the African-American physicians in the Lansing metropolitan area, there are only four African-American obstetrician/gynecologists. Dr. Eaton testified that Petitioner has admitted to and come to terms with his past indiscretions, and, for this reason, believes it will never occur again. She also added that Petitioner has always gone out of his way to provide excellent care for his patients, particularly those indigent patients whom many physicians refuse to treat.

Judith Brown Clarke testified on behalf of Petitioner that she presently resides in Lansing and works for the State of Michigan. Mrs. Clarke graduated from Michigan State University in 1983, and in the mid-1980's, competed in and won a Silver Medal in the Olympic Games. She is presently studying for her doctorate at Western Michigan University.

Mrs. Clarke testified she first met Petitioner in the fall of 1995 when she was

pregnant with her second child. She described how past medical conditions, specifically Endometriosis, has caused her significant difficulties during and before childbirth, and that she lost her first child as the result of severe complications. Mrs. Clarke testified that, when she became pregnant with her second child, she decided to treat with Petitioner because she was unhappy with the doctor she treated with her first pregnancy.

Mrs. Clarke testified that Petitioner provided her excellent care during her second pregnancy, and firmly believes that if it wasn't for Petitioner's knowledge, skills and compassion, she might have lost her second child as well. She believes Petitioner is presently of good moral character, that he can practice safely, and that it's in the public interest to reinstate his license. She added that, if Petitioner is relicensed, she will return to his practice for care.

On cross examination, Mrs. Brown acknowledged that, when she read about what Petitioner had done, she was disappointed in him, but, at the same time, realizes that people make mistakes and that they learn from them. She therefore believes that, because Petitioner has learned from his mistakes, he is unlikely to repeat them.

Hugh Barrington Clarke, Jr. testified on behalf of Petitioner that he is presently a licensed Michigan attorney, and has been practicing law since approximately 1979. His practice consists primarily of criminal defense work. Mr. Clarke indicated that, because he practices primarily in the area of criminal defense, he has come into contact with many people who fall on hard times and commit wrong, but eventually pull their lives together and become contributing members of society.

Mr. Clarke testified that his practice has brought him into contact with a large

number of underprivileged individuals who feel more comfortable consulting or treating with other professionals of their own racial or ethnic ancestry. This is why he feels it is so important to have individuals such as Petitioner licensed to practice their profession in the Lansing area.

Mr. Clarke testified he first met Petitioner in 1986 when his first wife became ill with a tubal pregnancy and was bleeding severely. Petitioner was apparently the physician who performed emergency surgery on Mr. Clarke's first wife. Mr. Clarke described how he met with Petitioner at the hospital, and how Petitioner explained to him in detail the problems confronting his wife. Mr. Clarke further testified that, after he first met Petitioner, he would occasionally see him at community functions, but that other than this, they had no formal social relationship.

Judith Brown Clarke, who also testified for Petitioner, eventually became Mr. Clarke's second wife. Mr. Clarke testified that he and Mrs. Brown became pregnant with their first child, but because of Mrs. Brown's medical condition, the child was born severely prematurely, and died three days after birth. He indicated that, when Mrs. Brown became pregnant with their second child, he strongly suggested she visit with Petitioner because he was so impressed with what he did for his first wife.

Mr. Clarke testified that, because of Mrs. Brown's medical condition, the pregnancy also ran into complications and their second child was also born prematurely, but because Petitioner was involved in getting her through the pregnancy, the child is now healthy.

Mr. Clarke opined that Petitioner is presently of good moral character, and that Petitioner has had an opportunity to reflect on his past misconduct. Mr. Clarke described how, when he arrived at the hospital for the birth of their second child, Petitioner was already there

working feverishly because the baby was already in distress. Mr. Clarke indicated he therefore had an opportunity to see Petitioner perform his professional duties as a physician and therefore has no doubt Petitioner can practice safely and skillfully.

With regard to the public interest, Mr. Clarke testified the African-American community needs Petitioner. He indicated that Petitioner is one of the only physicians in the Lansing who will treat individuals who otherwise cannot afford medical care. He also stressed that these same people feel much more comfortable treating with a doctor such as Petitioner who can relate to and is familiar with medical issues specific to their racial or ethnic ancestry.

Dr. Glynda Melonson Moorer, M.D. testified on behalf of Petitioner that she is a licensed Michigan physician. Dr. Moorer earned her medical degree from Michigan State University. Her practice consists mostly of students and their spouses. Dr. Moorer curriculum vitae was admitted into the record as Petitioner Exhibit 24.

Dr. Moorer testified she has known Petitioner for approximately 15 years, having met him during her residency at Sparrow Hospital. She also indicated she's been Petitioner's patient since approximately 1987, and that he delivered her last child in 1988. She further indicated she's referred patients to Petitioner in the past, and that, if he's relicensed, will do so in the future.

Dr. Moorer testified that, during the time she was his patient, Petitioner always treated her with respect. She stated he would hug her, but never when she was dressed in an office drape or gown. She further stated he never flirted with her, asked her on a date, or made inappropriate comments.

Dr. Moorer believes Petitioner is presently of good moral character, and that he can presently practice medicine with reasonable skill and safety. She firmly believes Petitioner made an error in judgment and that he has come to terms with his past conduct. Dr. Moorer believes the public interest would be well served by having Petitioner relicensed. She stated that minorities have a difficult time obtaining quality care in this area, and that Petitioner is one of a very few physician who can provide such excellent care. She added that, if Petitioner is relicensed, she'll once again begin treating with him as well.

Dr. Ronald Augustus Nichols testified on behalf of Petitioner that he is a physician presently licensed to practice medicine in Michigan, Ohio and Kentucky. Dr. Nichols is a specialist in Perinatology, or high risk pregnancy medicine. Dr. Nichols indicated that, until approximately 1993, he was the only perinatologist in the Lansing, Michigan area. He is board certified in obstetrics/gynecology and board eligible in perinatology. Dr. Nichols' curriculum vitae was admitted into the record as Petitioner Exhibit 19.

Dr. Nichols testified he met Petitioner in 1988 when he first arrived in the Lansing area. He indicated Petitioner made him feel comfortable because, at the time, there were only about 3 or 4 African-American physicians in the area. Dr. Nichols indicated that Petitioner is his wife's obstetrician/gynecologist and that all of his children were delivered by Petitioner.

Dr. Nichols testified that he served as a member of the Board of Medicine from 1989 to 1993, and is therefore familiar with the requirements for reinstatement of licenses. He opined that, after reading Judge Stump's Proposal for Decision and the Board's Final Order, Petitioner is presently of good moral character because he recognizes his mistakes and has taken steps to assure they will never be repeated.

With regard to ability to practice, Dr. Nichols indicated he's worked with Petitioner on several occasions and has had the opportunity to see Petitioner's work. He therefore believes that Petitioner possesses the present ability to practice in a safe and skillful manner.

With regard to the public interest, Dr. Nichols testified that the Lansing community needs African-American role models, and that Petitioner is definitely one who can fill that need. He believes Petitioner is an asset to this community, particularly because he's one of the only physicians who will treat people who cannot afford medical services. He also believes Petitioner is an asset because African-American female patients generally feel more comfortable treating with someone of their own race and ethnic ancestry. Finally, Dr. Nichols indicated that, if Petitioner is relicensed, his wife will return to his practice.

Ira Combs, Jr., Ph.D., testified by deposition dated June 18, 2001. (*Petitioner Exhibit 26*). Mr. Combs is presently the pastor at Bible Way Temple Church in Jackson, Michigan. He has known Petitioner for approximately 20 years.

Mr. Combs testified that Petitioner is not a member of his church, however, he has performed volunteer work at the church for years, primarily working in the cafeteria with his wife, Shirley, who is a member of the church.

Mr. Combs testified that he and Petitioner have spoken informally about Petitioner's past problems, and that, during those conversations, Petitioner has acknowledged and taken responsibility for his wrongful conduct. Mr. Combs added that, during all times he was volunteering services to his church, Petitioner acted appropriately and properly. Mr. Combs therefore believes Petitioner to be presently of good moral character.

Mr. Combs testified that all people make mistakes, and that Petitioner, as one of those people who made a mistake, deserves a second chance to prove that he can remedy past wrongdoing.

Petitioner testified on his own behalf at the July 16, 2001 hearing. He is presently 64 years of age and resides in East Lansing, Michigan. He's been married to his wife, Shirley for 34 years and has one son.

Petitioner graduated from Ohio State University in 1972 and received his medical education at the Medical College of Ohio in Toledo. After completing his residency, Petitioner was hired by Blue Cross/Blue Shield of Michigan where he worked from 1980 to 1983. In 1983, he entered private practice in the Lansing, Michigan area where he specialized in obstetrics and gynecology. Petitioner is a member of the Lansing Obstetrics Society, the American Board of Obstetrics and Gynecology and the American Medical Association.

Petitioner testified that, since his license was suspended, he has been consulting with a psychiatrist twice per month because he believes such treatment has helped him to overcome his past problems. He also indicated he's participated in both live seminar and self study continuing medical education course work to assist him in keeping current with his profession.

With regard to physician-patient boundary issues, Petitioner testified he participated in continuing education course work, and now realizes the importance of always having a patient's family member or other chaperone present in the room when he's treating that patient. *(See Petitioner Exhibits 12 and 14)*

With regard to recognizing potential drug-seeking patients, Petitioner testified he attended a one-day course in New York City sponsored by Columbia University. He indicated this course taught him how to recognize and deal with drug-seeking patients. *(See Petitioner Exhibits 9 and 10)*

Petitioner testified his ongoing treatment with a psychiatrist has taught him an enormous amount about himself and the vulnerability of not only himself but also of his patients. He acknowledged it is his sole responsibility to maintain physician-patient boundaries.

With regard to maintaining professional boundaries and treating drug-seeking patients, Petitioner has developed written guidelines which, he indicated, he intends to follow

if and when his license is reinstated. (*See Petitioner Exhibits 16 and 17*)

Petitioner testified he has not worked for compensation since his license was suspended but rather, has spent a great deal of time with his family. He has also donated his time to various agencies such as the Lansing Rescue Mission and his wife's church. (*See Petitioner Exhibits 2 and 3*)

Petitioner believes he is presently of good moral character, that he can presently practice medicine safely and skillfully, and that it would be in the public interest to have his license reinstated. He stated that, because of his past problems, and because of what he has learned from them, he will be a better physician once he's relicensed. He further stated he recognizes his shortcomings and faults, and has taken positive steps to overcome them.

On cross examination, Petitioner acknowledges that, during the disciplinary hearing before Judge Stump, he testified to being unaware of any written standard which prohibited sex between a doctor and patient. He stated, however, that he now realizes that sex between a doctor and current patient is always wrong, and that the patient is always in a vulnerable position. He admits he was wrong for violating this boundary.

On further cross examination, Petitioner indicated he now recognizes he must always be careful about what he says to not only his patients but other individuals in general, and now realizes that body gestures and other comments may be taken the wrong way.

CONCLUSIONS OF LAW:

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice (2d ed) Section 60.48, page 280.

The burden of proof is upon Petitioner to establish that his Application for Reinstatement should be granted. More specifically the Petitioner must establish, by clear and convincing evidence, that he has satisfied the requirements and conditions for reinstatement of his medical license as set forth under the Code.

Thus, the burden of proof rests upon the Petitioner to establish on this record as a whole, by clear and convincing evidence, that he is presently of good moral character, that he has the present ability to practice medicine with reasonable skill and safety to patients, and that it is in the public interest to permit the Petitioner to return to the practice of medicine in Michigan.

GOOD MORAL CHARACTER

MCL 338.41

“Sec. 1. (1) The phrase "good moral character", or words of similar import, when used as a requirement for an occupational or professional license or when used as a requirement to establish or operate an organization or facility regulated by this state in the Michigan Compiled Laws or administrative rules promulgated under those laws shall be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.”

Petitioner’s romantic involvement with patients is clearly evidence of questionable moral character. His failure to document the prescription of controlled

substances is not so much evidence of bad moral character, as it is evidence of incompetence.

Nonetheless, it is also clear to this Judge that Petitioner has paid a heavy price for his actions. His license was suspended as it should have been. However, this Judge cannot overlook the fact that Petitioner appears to realize the extent of his wrongdoing and the damage it has caused himself, his patients and his family. In addition, the affidavits submitted into the record and live testimony provided on Petitioner's behalf attest positively to the present status of his moral character.

For the above reasons and based upon this Judge's observations of Petitioner's credibility and demeanor at the hearing held in this matter, it is found and concluded that Petitioner has come to terms with his past misconduct. It is also apparent that Petitioner continues to seek professional assistance to insure that he will conduct himself in a professional manner in the future. As a result, he presently possesses the ability to serve the public in a fair, honest and open manner.

Accordingly, Petitioner has established, by clear and convincing evidence, that he is presently of good moral character.

ABILITY TO PRACTICE

Petitioner has been removed from the active practice of medicine for slightly over one year. During that time, Petitioner has participated in various continuing education course work, both in live seminar and self study format. In addition, Petitioner has taken course work specifically related to the subject matter for which he was found to have violated

the Code.

In addition, the evidence presented supports a conclusion that Petitioner has formally kept himself abreast of the profession by reading professional journals and periodicals.

Accordingly, Petitioner has established, by clear and convincing evidence, that he possesses the present ability to practice medicine in a safe and skillful manner to patients.

PUBLIC INTEREST

The public interest certainly is not at all served by having any health professional engaging in the type and nature of misconduct displayed by Petitioner. Such conduct reflects negatively not only on the medical profession but on the health professions in general.

However, the public interest is most definitely served by giving a once competent and caring health professional such as Petitioner the opportunity to prove he can practice his profession within established rules and regulations. It is not in the public interest for a health professional who encounters setbacks in their lives to be perpetually punished for their misdeeds, or that they never be given another chance to prove themselves worthy. Although in this case those mistakes came in the form of outrageous conduct and poor professional judgment, this Judge concludes, based upon what was presented at the hearing in this matter, that Petitioner is unlikely to repeat those mistakes again.

Accordingly, this Judge concludes that Petitioner has established, by clear and

convincing evidence, that it is in the public interest to grant reinstatement of his medical license.

SUMMARY

Petitioner has established, by clear and convincing evidence, that he is presently of good moral character, that he possesses the present ability to practice medicine in a safe and skillful manner, and that it would be in the public interest to reinstate his medical license at this time.

PROPOSED DECISION:

This Judge **PROPOSES** that Petitioner's Application for Reinstatement of his medical license be **GRANTED** with whatever limitations the Board may deem appropriate under the circumstances.

Within fifteen (15) days after service of this Proposal for Decision, a party may file exceptions thereto and present written arguments.

Within five (5) days thereafter, an opposing party may file a response to the exceptions.

STEPHEN B. GOLDSTEIN
ADMINISTRATIVE LAW JUDGE