

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

In the Matter of the Petition)
of:)
)
NABIL GHALI, M.D.)
P. O. Box 431874) L-61421
Miami, Florida 33143)
)
Physician's and Surgeon's)
Certificate No. A-025206)
)
Petitioner.)
_____)

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 August 24, 1994 .

IT IS SO ORDERED July 25, 1994 .

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

By Alan E. Braden MD

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

In the matter of the Petition) OAH No. L-61421
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Respondent/Petitioner.) PROPOSED DECISION

This matter came on regularly for hearing before Carolyn Dee Magnuson, Administrative Law Judge of the Office of Administrative Hearings on October 14, 1993, in Los Angeles, California.

The petitioner, Nabil Ghali, appeared personally and was represented by Malcolm S. McNeil, attorney at law.

The Attorney General was represented by Deputy Attorney General Cindy Lopez.

Oral and documentary evidence was received, and the record was left open for post hearing briefs. Petitioner's initial brief was received on December 3, 1993. The response brief was received January 5, 1994. Petitioner's final brief was received January 14, 1994; the record was closed; and the matter was submitted for decision. The Administrative Law Judge makes the following findings of fact:

I

Petitioner was initially licensed as a physician in Egypt in 1958; he was first licensed in the United States in Kentucky in 1968; and he was thereafter licensed in California in 1973. His specialty is obstetrics and gynecology.

II

Effective June 27, 1988, petitioner's California license was revoked based on petitioner's professional discipline in other jurisdictions as follows:

a. In November, 1983, the Medical Board of the State of Kentucky revoked petitioner's license to practice medicine in that state based on petitioner's 1982 conviction of sexual misconduct involving a minor.

b. In August, 1985, the Medical Board of the State of Utah revoked petitioner's license to practice medicine in that state because petitioner failed to reveal on his application for renewal that he had been disciplined by the Kentucky and Ohio medical boards.

III

In September, 1989, petitioner filed a petition for reinstatement of his revoked license. That petition was denied.

In October, 1992, petitioner filed the instant petition for reinstatement.

SPECIAL FINDING

The issue was raised at trial whether the administrative court had jurisdiction to hear the instant petition, since petitioner's professional letters of recommendation did not include two from doctors who were licensed in California, as required by Business and Professions Code section 2307.¹ It does.

Any defect there might have been in petitioner's recommendations was waived when the Board elected to go forward with the hearing on his petition rather than to return the recommenda-

¹ Respondent submitted three letter of recommendation from doctors who knew him in Ohio. One of those doctors was also licensed in California.

The letter from Dr. Green, the psychiatrist who evaluated respondent, was not an acceptable letter of recommendation because Dr. Green did not personally know of respondent's professional activities during his period of suspension.

tions to petitioner for rectification or to otherwise advise petitioner that his petition was unacceptable.²

IV

At the time he filed his petition, petitioner was employed as a physician. At the time of hearing, he apparently was no longer so employed.

V

In 1982, petitioner was convicted of four misdemeanor counts of unlawful transaction with a minor who, at the time, was 14 years old. Although it was found by the Kentucky Medical Board that petitioner had a patient-physician relationship with the girl, there was no nexus between that relationship and the criminal conduct, which arose in a unconnected context.

None-the-less, such a demonstrated willingness to take sexual advantage of a young girl is particularly disturbing where, as here, the perpetrator is a doctor whose specialty regularly puts him into intimate physical contact with young women.

In all the years of petitioner's medical practice, there is no record of any similar conduct, whether in a personal or professional context.

VI

Petitioner's expert psychiatrist opined that petitioner's acts in 1982 arose from stressors in his life, the most important being his wife's leaving him, which are unlikely to recur.

However, because the expert's opinion was based on a short interview and relied entirely on petitioner's recital of the relevant facts and because there was no psychological testing or evaluation done of petitioner to support the expert's opinion, there was little weight given to the evidence.

² Because the issue was decided on other grounds, it is not necessary to decide whether requiring recommendations from physicians who are licensed by California and who have personal knowledge of the petitioner during the period of discipline impermissibly interferes with the petitioner's constitutional rights.

VII

Petitioner appears to view his professional discipline for dishonesty as being irrelevant, since, as he states "it emanated from the same nucleus of facts" i.e. the criminal conviction.

In fact, petitioner is wrong. His dishonesty is a separate basis for discipline and further, is one which is very serious.

VIII

Petitioner successfully completed his criminal probation and that he carried out all of its terms, including paying restitution and providing community service.

IX

Petitioner's compliance with the terms of the various professional discipline he has incurred was not in evidence.

X

Petitioner has had difficulty accepting responsibility for, and being honest about, his criminal conduct. He lied about his criminal conviction and subsequent professional discipline on his application for relicensure in Utah in 1985, which resulted in revocation of his license in that state.

According to petitioner's narrative statement which he submitted with his petition, in 1990 the Ohio Medical Board conducted a disciplinary hearing against him, the gravamen of which seems to have been petitioner's failure in 1986 and 1988 to provide truthful information concerning his prior professional discipline.

As the result of that trial, the Ohio tribunal ordered revocation of petitioner's license; petitioner appealed the order.³

XI

The only remorse which petitioner expressed was regret that his conduct had resulted in harm to himself: "I am sorry I got myself into that situation." "I'm very sorry I put myself

³ One wonders if petitioner's testimony that he is "not actively practicing at this time" indicates that he lost the appeal of the Ohio decision. Certainly, it is respondent's responsibility to make the record clear on the point.

through that." He expressed no concern for or awareness of any harm he might have done the girl involved.

In fact, petitioner has consistently attempted to shift responsibility for the incident to the girl, who, according to petitioner, initiated the sexual conduct.

XII

Moreover, respondent has failed to change his conduct as a result of the difficulties he has encountered. Despite the fact that he has been revoked in one jurisdiction for dishonesty, in 1990 he was again before a medical board because of his lack of candor about his criminal and professional background. If, indeed, the proposed Ohio discipline has been imposed in the interim between petitioner's submitting his petition and its being heard, he failed to inform the Board and the administrative court of that fact.

XIII

Given petitioner's failure to comprehend and/or acknowledge the wrongfulness of his conduct in 1982, which resulted in his criminal conviction; his ongoing pattern of dishonesty concerning professional discipline; his failure to provide adequate evidence of his present psychological condition; and the unresolved questions about his 1990 Ohio disciplinary hearing, it cannot be said that petitioner is sufficiently rehabilitated so that his relicensure would be consistent with the public safety.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge determines that petitioner has failed to show good cause to reinstate petitioner's physician's and surgeon's certificate.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The petition of Nabil Ghali for reinstatement of his revoked certificate is denied.

Date: *May 2, 1994*

Carolyn Dee Magnuson
CAROLYN DEE MAGNUSON
Administrative Law Judge
Office of Administrative Hearings