BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **MAHENDRA NATH, M.D.,** Holder of License No. **10234** For the Practice of Allopathic Medicine In the State of Arizona.	Board Case No. MD-08A-10234-MDX **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** (License Revocation)

On December 3, 2008, this matter came before the Arizona Medical Board ("Board") for oral argument and consideration of the Administrative Law Judge (ALJ) Brian Brendan Tully's proposed Findings of Fact and Conclusions of Law and Recommended Order. Mahendra Nath M.D., ("Respondent") appeared before the Board, Michael W. Sillyman, represented the State. Chris Munns, Assistant Attorney General with the Solicitor General's Section of the attorney General's Office, was present and available to provide independent legal advice to the Board.

The Board, having considered the ALJ's decision and the entire record in this matter, hereby issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Arizona Medical Board ("Arizona Board") is the authority for licensing and regulating the practice of allopathic medicine in the State of Arizona.
2. Mahendra Nath, M.D. ("Respondent") is the holder of License No. 10234 issued by the Arizona Board for the practice of allopathic medicine in Arizona.
3. Respondent also possesses Physician's and Surgeon's Certificate No. A 32279 issued by the Medical Board of California ("California Board").
4. On or about June 3, 2004, Respondent was named as the Defendant in a Misdemeanor Complaint in Case No. 04913593-0 before the Superior Court of California, County of Fresno, Central Division ("Superior Court"). In the

Misdemeanor Complaint, Respondent was charged with eight criminal counts of Sexual Battery against six female patients.

5. On or about February 8, 2005, Respondent entered a plea of No Contest to amended Counts 6 and 7 of the Amended Misdemeanor Complaint. Those Counts were amended to the misdemeanor crime of Battery in violation of Penal Code Section 242. The remaining counts were dismissed.

6. Penal Code Section 242 defines the crime of Battery as follows: "A battery is any willful and unlawful use of force or violence upon the person of another."

7. In his no contest plea, Respondent stipulated to the factual basis for Counts 6 and 7, as amended, based upon the Court's reading of the police reports.

8. The Superior Court sentenced Respondent to 3 years suspended sentence, 3 years probation, and a fine plus costs. The Superior Court also ordered that Respondent "not operate in medical procedures w/out 3rd party [and] to follow any procedures ordered by medical board."

9. On or about December 8, 2005, Arizona Board staff received a Disciplinary Alert Report concerning Respondent. The report advised that the California Board had placed Respondent's California medical license on probation, subject to terms and conditions of probation.

10. Respondent and the Medical Board of California entered into a Stipulated Settlement and Disciplinary Order ("Order") on September 2, 2005, that was adopted by the Medical Board of California on November 18, 2005, effective December 19, 2005. In the Order, Respondent stipulated and agreed that the Accusation filed against him was true. The allegations in the Accusation included not only the individual accusations involving his female patients but his misdemeanor conviction of battery based on allegations that he "willfully and unlawfully touched an intimate part of... Jane Does against their will and for the specific purpose of sexual arousal, sexual gratification and sexual abuse."

11. The California Board issued a Disciplinary Order which revoked Respondent's California medical license, but stayed the revocation and placed Respondent on

probation for seven years, subject to specific terms and conditions of probation set forth in the Disciplinary Order.

12. The California Board ordered that Respondent be prohibited from treating patients during his probation.

13. On December 8, 2005, the Arizona Board initiated an investigation of Respondent.

14. On or about December 16, 2005, the Arizona Board and Respondent entered into an Interim Consent Agreement for Practice Restriction in Case No. MD-05-1208A ("Interim Consent Agreement"). The Interim Consent Agreement ordered, among other things, that "Respondent shall not practice in clinical medicine or any medicine involving direct patient care and is prohibited from prescribing any form of treatment including prescription medications until Respondent applies to the Board and receives permission to do so."

15. In the Interim Consent Agreement, Respondent did not admit to the alleged misconduct involving his patients.

16. On or about December 20, 2005, Respondent wrote a letter to Lisa Thornton, the Arizona Board's lead investigator in this matter. Respondent explained the actions taken by the California Board against his California license.

17. In his letter, Respondent made the following statement:

> I have not admitted to a sexual misconduct since there wasn't any. I plead no contest to a simple battery because of emotional stress for my family and the prohibitive cost of litigation. Apart from the original allegations two years ago there have been no further allegations inspite [*sic*] of newspaper articles on three different occasions while I continued to practice.

18. Despite his voluntarily entering into the settlement agreement with the California Board, Respondent's letter to Ms. Thornton also made the following statement:

> The California Medical Board order is extremely restrictive and my probation monitor was in disbelief that such a hard action has been taken. I have not been able to make a living with conditions imposed. It is an extreme financial hardship. I have to support my two college going [*sic*] children.
>
> I urge you to kindly take a sympathetic view of my case and allow me probation whereby I can work and support my family.

19 On or about July 18, 2006, Ms. Thornton issued an Investigative Report which discussed her investigation of Respondent.

20 By letter dated August 1, 2006 to Ms. Thornton, Respondent responded to the Arizona Board's allegations against him. Respondent wrote that "the California Medical Board has taken a harsh punitive disciplinary action" against him. He denied any sexual misconduct and claimed that "a criminal case was instituted against me by a zealous district attorney."

21 Respondent represented that he had completed the Physician Assessment and Clinical Evaluation ("PACE") and was "aware of the boundary issues." Respondent provided no documentation to confirm his successful completion of PACE.

22 Respondent concluded his letter by requesting that the Arizona Board "take a decision independent of the Medical Board of California which has been unusually harsh and punitive."

23 On or about August 23, 2006, the Arizona Board's Staff Investigational Review Committee ("SIRC") reviewed Respondent's case. The SIRC concluded that "there was sufficient evidence in the file to show unprofessional conduct and all committee members were in agreement with the recommendation for Revocation based on the action taken by the California Medical Board for the unprofessional conduct as identified."

24 On or about October 23, 2006, the Arizona Board received a letter from Respondent to the Arizona Board's Chair, Robert P. Goldfarb, M.D. Respondent again reiterated his view that "the California Board has been excessively punitive." He went on to say that the proposed revocation of his Arizona medical license "is extremely punitive...and is far beyond California Board's actions which have at least allowed me to continue my license." Respondent requested that the Arizona Board issue a stay of the revocation of his Arizona license.

25 Respondent claims that his misdemeanor criminal convictions have been set aside. However, Respondent failed to present any credible documentary evidence to support that position.

26 Respondent did complete over 400 hours of CME.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent and the subject matter in this case.
2. Pursuant to A.R.S. § 41-1092.07(G) (2), the Board has the burden of proof in this matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-119(A).
3. Respondent violated the provisions of A.R.S. § 32-1401.27(d), as alleged in the Complaint and Notice of Hearing for Revocation of Medical License. Respondent entered into a No Contest plea to two misdemeanor counts of battery based on allegations of sexual battery involving two of his female patients. Under the circumstances, the misdemeanor of battery constitutes a misdemeanor involving moral turpitude in violation of A.R.S. § 32-1401.27(d).
4. Respondent violated the provisions of A.R.S. § 32-1401.27(o) by virtue of the actions of the Medical Board of California which placed Respondent on probation and placed restrictions and conditions on his license.
5. Respondent's plea of no contest to battery involving sexual touching and conduct with patients constitutes an admission of engaging in sexual conduct with a current patient in violation of A.R.S. § 32-1401.27(z).

ORDER

Based on the foregoing, it is hereby Ordered that License No. 22164 for the practice as an allopathic physician in the State of Arizona issued to Respondent Mahendra Nath, M.D. be revoked. Pursuant to A.R.S. § 32-1451.M and A.R.S. § 41-2007, Respondent shall pay costs of the administrative hearing not to exceed $5000 (Five Thousand Dollars).

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

DATED this 4TH day of December, 2008.

THE ARIZONA MEDICAL BOARD

By _____
LISA WYNN
Executive Director

ORIGINAL of the foregoing filed this
_____ day of December, 2008 with:

Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

COPY OF THE FOREGOING FILED
this _____ day of December, 2008 with:

Cliff J. Vanell, Director
Office of Administrative Hearings
1400 W. Washington, Ste 101
Phoenix, AZ 85007

Executed copy of the foregoing
mailed by U.S. Mail this
_____ day of December, 2008, to:

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