BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of Shakeel A. Kahn, M.D., Applicant for Licensure For the Practice of Allopathic Medicine In the State of Arizona.	Case No. 20A-37896-MDX **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On May 6, 2021, this matter came before the Arizona Medical Board ("Board") for consideration of Administrative Law Judge ("ALJ") Jenna Clark's proposed Findings of Fact, Conclusions of Law and Recommended Order. Shakeel A. Kahn, M.D., ("Respondent") did not appear. Assistant Attorney General Carrie Smith represented the State. Assistant Attorney General Elizabeth A. Campbell was 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

RESPONDENT'S PRIOR DISCIPLINARY RECORD

1. The Board is the authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of License No. 37896 for the practice of allopathic medicine in Arizona. Administrative Notice is taken that Respondent was first issued his license to practice in the State of Arizona on January 03, 2008.[1] Respondent's license is currently suspended.

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[1] See https://azbomprod.azmd.gov/glsuiteweb/clients/azbom/Public/Profile.aspx.

3. On or about March 26, 2013, the Arizona Court of Appeals issued a decision affirming a decision issued by the Arizona Superior Court, Maricopa County, which upheld the Board's August 11, 2010, decision to adopt an ALJ Decision adverse to Respondent.[2]

4. On April 18, 2014, the Board issued an ADVISORY LETTER to Respondent, in lieu of adopting ALJ Decision 13A-37986-MDX, for alleged "minor charting errors."[3]

BACKGROUND AND PROCEDURE

5. August 11, 2015, the Board received 2 online complaints against Respondent from Wal-Mart and Walgreens pharmacies in Flagstaff, AZ regarding opioid prescriptions.[4] As a result, the Board initiated an investigation, case number MD-15-0977A, into the confirmable facts surrounding Respondent's opioid prescribing by assigning a Medical Consultant to review 4 of Respondent's patient's charts. Charts were pulled and reviewed for patients CD, CEM, CM, and AV. The Medical Consultant[5] determined the following[6]:

a. On December 22, 2011, patient CD, a 29yr old female, established care with Respondent through August 10, 2015. Respondent diagnosed CD with chronic low back and neck pain due to a motor cycle accident. Respondent prescribed CD a 30-day supply of 30mg #360 oxycodone. CD also had a prescription for benzodiazepines. Over the course of her treatment, Respondent increased her prescriptions to 120mg Methadone per day, 720mg Oxycodone per day, and 128mg Hydromorphone per day.[7]

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[2] *See* Board Exhibit 19.

[3] *See* Board Exhibit 18.

[4] *See* Board Exhibits 1-2.

[5] *See* Board Exhibit 10.

[6] *See* Confidential Board Exhibit 12.

[7] *See* Confidential Board Exhibit 14.

i. The Medical Consultant opined that CD was a high-risk patient for opioid prescriptions because she was young, enrolled in Medicare, actively using marijuana and alcohol, and was also a smoker. The Medical Consultant also opined that CD was a high-risk patient for opioid abuse or diversion.

b. On December 19, 2012, patient CEM, a 61yr old male, established care with Respondent every 15-days over the course of 3.5yrs for post-surgery related back pain. In December 2011, CEM's previous physician had prescribed him a 2-month supply of 30mg oxycodone. At CEM's first appointment, Respondent prescribed 114-day supply of 10mg #120 methadone and #300 oxycodone. From May to June of 2015, Respondent titrated CEM up to 50mg of methadone and 720mg of oxycodone per day, and a 100ug fentanyl patch per hour. At CEM's last appointment Respondent titrated CEM back down with a prescription for 15-day supply of 10mg #120 methadone, 30mg #240 oxycodone, and 50ug per hour fentanyl patch.

i. The Medical Consultant opined that CEM was a high-risk patient for opioid abuse or diversion.

c. On March 13, 2012, patient CM, a 21yr old male, established care with Respondent through August 10, 2015. CM presented with complaints of chronic low back pain and migraine headaches. Respondent prescribed daily 180mg #180 oxycodone and 32mg #120 dilaudid. On October 25, 2012, Respondent modified CM's prescription to daily 210mg #180 oxycodone, 24mg #120 dilaudid, and 350mg Soma. On February 14, 2013, after CM reported overuse of his prescriptions, Respondent increased CM's dose to 270mg oxycodone and 34mg dilaudid. At CM's final appointment, Respondent prescribed daily 720mg oxycodone, 350mg Soma, and 2mg Xanax.

i. The Medical Consultant opined that imaging studies did not provide an explanation or basis for the patient's alleged chronic pain.

d. On April 03, 2012, patient AV, a 24yr old male, established care with Respondent through August 10, 2015. AV presented with complaints of anxiety, obesity, low back and knee pain. Respondent prescribed AV 150mg of oxycodone per day. AV had several early refills during his course of treatment with Respondent which were not accounted for.[8] At AV's last appointment Respondent prescribed 720mg oxycodone per day with 350mg Soma and 2mg Xanax. On or about May 05, 2014, AV was arrested and charged with selling his prescription opioid medications.[9] From June 21, 2014, to November 11, 2014, AV was incarcerated in the Clark County Detention Center. During this time period Respondent issued over 20 prescriptions for controlled substances in AV's name; including oxycodone, carisoprodol, and alprazolam. The prescriptions were filled by a third party and diverted.[10]

e. Respondent did not obtained CD's, CEM's, CM's, or AV's patient records from prior treating providers prior to issuing any of the aforementioned prescriptions.

f. Diversion is a major concern for all patients, especially cash-only patients.

6. On or about September 06, 2015, Respondent prescribed controlled substances to his wife ("LV"), stepson ("DV"), stepdaughter ("SV"), and mother-in-law ("KZ").[11]

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[8] *See* Confidential Board Exhibit 13.

[9] *See* Board Exhibit 3.

[10] *See* Board Exhibit 9; *see also* Confidential Board Exhibit 15.

[11] *See* Board Exhibit 7.

7. On or about August 02, 2016, the Board issued an Interim Consent Agreement for Practice Restriction[12] to Respondent. Respondent never responded to the Board.

8. On August 04, 2016, the Board found that the public's health, safety, and welfare imperatively required emergency action and voted to summarily suspend Respondent's medical license.[13] On August 05, 2016, the Board issued INTERIM FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER FOR SUMMARY SUSPENSION OF LICENSE against Respondent.[14]

9. On November 29, 2016, the Wyoming Board of Medicine ("Wyoming Board") summarily suspended Respondent's Wyoming medical license for prescribing additional controlled substances to patients CEM and LV utilizing his Wyoming prescribing authority concurrently with medications prescribed under his Arizona medical license.

10. On May 15, 2017, the federal Drug Enforcement Administration ("DEA") revoked Respondent's controlled substance prescription registration.

11. On August 19, 2019, in case 2:17-CR-00029-ABJ in the United States District court for the District of Wyoming, Respondent was convicted of 21 felony counts including Conspiracy to Dispense and Distribute Oxycodone, Alprazolam, Hydromorphone, and Carisoprodol, Resulting in Death, Possession of Firearms in Furtherance of Federal Drug Trafficking Crime, Continuing a Criminal Enterprise and Unlawful Use of a Communications Facility. Respondent was sentenced to a 240 month term in prison, in addition to financial penalties, restitution, and other terms and conditions.[15]

12. On December 03, 2020, the Board issued an AMENDED COMPLAINT AND NOTICE OF HEARING ("COMPLAINT") alleging Respondent had engaged in unprofessional

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[12] *See* Board Exhibit 4.

[13] *See* Board Exhibit 6.

[14] *See* Board Exhibit 5.

[15] *See* Board Exhibit 8.

conduct pursuant ARIZ. REV. STAT. §§ 32-1401(27)(d) ("[c]omitting a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission."); 32-1401(27)(e) ("[f]ailing or refusing to maintain adequate records on a patient"); 32-1401(27)(h) ("[p]rescribing or dispensing controlled substances to members of the physician's immediate family."); 32-1401(27)(p) ("[h]aving action taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine or the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction."); 32-1401(27)(r) ("[v]iolating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter"); 32-1401(27)(u) ("[k]nowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine.") and 32-1401(27)(kk) ("[k]nowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board.").

13. Respondent's ANSWER was timely received by the Board.[16]

14. The matter was referred to the Office of Administrative Hearings ("OAH"), and independent state agency, for hearing on January 15, 2021. The matter was continued to March 22, 2021, whereby it was concluded.

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[16] *See* Confidential Board Exhibit 16.

HEARING EVIDENCE

15. The Board presented the testimonies of Dr. Kenneth Gosslar, MD – Board Consultant ("Dr. Gosslar") and Erinn Downy – Board Investigator ("Investigator Downy"), and submitted exhibits 1-19.[17] The substantive evidence of record is as follows:

a. The standard of care for prescribing opioids for a patient with chronic benign pain requires a physician to obtain records from prior physicians prior to establishing a diagnosis for said patient. Appropriate imaging to establish the diagnosis should also be reviewed or ordered. A risk assessment should be performed to assure that the benefits of chronic opioid therapy outweigh the risk(s). Referrals for physical therapy, psychiatry, interventional pain and surgery should be considered. Dosages of medications should also be individualized and adjusted to a patient's function rather than their pain scores. The use of opioids should be closely monitored with pill counts and making sure patients are not getting their prescriptions early. Additionally, benzodiazepines, alcohol, sedating muscle relaxants and marijuana in combination with opioids are relatively contraindicated. If the patient does not demonstrate an increase in function with increasing doses, the patient should be tapered to the lower dose and the lowest effective dose should be utilized. Furthermore, urine drug screens with confirmatory testing should be utilized to measure compliance with the medical management and to detect the use of illicit substances.

b. Respondent deviated from the aforementioned standard of care regarding his treatment of patients CD, CM, and AV. Specifically, Respondent increased the dosages of the patients' opioid medications without appropriate justification including a supporting diagnosis and by continuing to prescribe opioid

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[1717] Board Exhibits 12-16 are held in confidence pursuant to ARIZ. REV. STAT. § 32-1451.1(C). Board Exhibits 1-11 and 17-19 are public.

medications without appropriate reassessment or monitoring for patient compliance.

c. Although patient CEM was properly diagnosed, Respondent deviated from the standard of care by doubling the patient's opioid medications despite CEM's decline in function.

d. The potential harm to all of these patients is that they will all most likely be on much higher doses of opioid medications for the rest of their lives. Had Respondent treated them with the proper doses this would most likely not be the case. Additionally, these patients are at a high risk of death from being on such high doses of opioid medications, as well as opioid-induced hyperalgesia.

e. On February 25, 2021, the United States Court of Appeals for the 10th Circuit, after reviewing Respondent's appeal of United States District Court for the District of Wyoming's decision in 2:17-CR-00029-ABJ, issued a decision affirming the lower court's decision against Respondent.[18]

16. In closing, the Board argued that because its mission is to protect public safety through regulation of its licensees, it had no choice but to summarily suspend Respondent's license based on his conduct. The Board argued that the evidence of record established that Respondent abused his medical license for his own personal benefit and enrichment, to the direct detriment of his patients and potential harm to Arizonans. The Board opined that Respondent's actions contributed to the national opioid crisis. The Board concluded by asking the Tribunal to revoke Respondent's license because it believed Respondent's conduct did not warrant lesser discipline, and because Respondent was incapable of submitting to regulation by the Board.

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[18] *See* Board Exhibit 17.

CONCLUSIONS OF LAW

1. The legislature created the Board to protect the public.[19] The Board is the duly constituted authority for licensing and regulating the practice of allopathic medicine in the State of Arizona. Therefore, the Board has jurisdiction over Respondent and the subject matter in this case.[20] The matter was properly brought before OAH for adjudication.[21]

2. The Board bears the burden of proof to establish cause to sanction Respondent's license to practice allopathic medicine and factors in aggravation of the penalty by clear and convincing evidence.[22] Respondent bears the burden to establish affirmative defenses and factors in mitigation of the penalty by the same evidentiary standard.[23]

3. The standard of proof is by clear and convincing evidence. Clear and convincing evidence is "[e]vidence indicating that the thing to be proved is highly probable or reasonably certain."[24]

4. ARIZ. REV. STAT. § 32-1451(D) provides that "[i]f the board finds, based on the information it receives under subsections A and B of this section, that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board takes action pursuant to this subsection, it shall also serve the licensee with a written notice that states the charges

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[19] *See* Laws 1992, Ch. 316, § 10.

[20] *See* ARIZ. REV. STAT. § 32-1401 *et seq.*

[21] *See* ARIZ. REV. STAT. § 41-1092 *et seq.*

[22] *See* ARIZ. REV. STAT. §§ 41-1092.07(G)(2) and 32-1451.04; ARIZ. ADMIN. CODE R2-19-119(B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

[23] *See* ARIZ. ADMIN. CODE R2-19-119(2) and (3).

[24] BLACK'S LAW DICTIONARY at 596 (8th ed. 1999).

and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days."

5. ARIZ. REV. STAT. § 32-1451(M) provides that "[a]ny doctor of medicine who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable safely to engage in the practice of medicine or to be medically incompetent is subject to censure, probation as provided in this section, suspension of license or revocation of license or any combination of these, including a stay of action, and for a period of time or permanently and under conditions as the board deems appropriate for the protection of the public health and safety and just in the circumstance. The board may charge the costs of formal hearings to the licensee who it finds to be in violation of this chapter."

6. ARIZ. REV. STAT. § 32-1401(2) defines "adequate records" to mean "legible medical records, produced by hand or electronically, containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment."

7. ARIZ. REV. STAT. § 32-1401(27)(d) defines "unprofessional conduct" to include, "Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission."

8. ARIZ. REV. STAT. § 32-1401(27)(e) defines "unprofessional conduct" to include, "Failing or refusing to maintain adequate records on a patient.

9. ARIZ. REV. STAT. § 32-1401(27)(h) defines "unprofessional conduct" to include, "Prescribing or dispensing controlled substances to members of the physician's immediate family."

10. ARIZ. REV. STAT. § 32-1401(27)(p) defines "unprofessional conduct" to include, "Having action taken against a doctor of medicine by another licensing or

regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine or the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction."

11. ARIZ. REV. STAT. § 32-1401(27)(r) defines "unprofessional conduct" to include, "Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter."

12. ARIZ. REV. STAT. § 32-1401(27)(u) defines "unprofessional conduct" to include, "Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine."

13. ARIZ. REV. STAT. § 32-1401(27)(kk) defines "unprofessional conduct" to include, "Knowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board."

14. The issue in this matter is whether Respondent engaged in acts of unprofessional conduct, and if so, whether grounds exist for the Board to discipline Respondent's license based on said conduct.

15. The substantive facts in this matter are not in dispute.

16. Here, the Board established by clear and convincing evidence that Respondent engaged in unprofessional conduct. Specifically, Respondent was convicted of 21 felony counts including prescription drug distribution and drug trafficking; Respondent did not maintain adequate patient records for CD, CEM, CM, or AV; Respondent prescribed controlled substances to his immediate family; Respondent's Wyoming medical license was summarily suspended and the DEA revoked Respondent's controlled substance prescription registration; one of Respondent's patient actually died; Respondent falsified patient

prescription records during his Rx-for-Cash scheme; and Respondent intentionally mislead the Board during its investigation by providing information he knew to be false.

17. Therefore, the sole remaining issue to be addressed is whether Respondent has established one or more affirmative defenses or mitigating factors, and if so, whether those defenses or mitigating factors preclude the Board from disciplining Respondent's license. As Respondent failed to participate in the proceedings or submit an attestation in his absence, Respondent has therefore failed to sustain his evidentiary burden in this matter.

18. The primary duty of a physician is to treat the ill to the very best of their ability, and remember that their patient is a sick human being whose illness may affect their emotional and economic stability. The artistry of the practice of medicine demands care and humility; two virtues that were clearly missing in Respondent's care of patients CD, CEM, CM, and AV.

19. Based upon a review of the credible and relevant facts in the record, this tribunal holds that the Board has sustained its evidentiary burden of proof in this matter. Because violations of ARIZ. REV. STAT. §§ 32-1401(27)(d); 32-1401(27)(e); 32-1401(27)(h); 32-1401(27)(p); 32-1401(27)(r); 32-1401(27)(u); 32-1401(27)(kk) have been established, grounds exist for the Board to discipline Respondent's license to practice medicine in the State of Arizona.

ORDER

Based on the foregoing findings of fact and conclusions of law,

IT IS ORDED that the Board's AMENDED COMPLAINT for case MD-20-37896-MDX be affirmed.

IT IS FURTHER ORDERD that Shakeel A. Kahn, MD, holder of License No. 37896 for the practice of allopathic medicine in the State of Arizona, be revoked.

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 7th day of ~~February~~ May, 2021.

THE ARIZONA MEDICAL BOARD

By Patricia E. McSorley
Patricia E. McSorley
Executive Director

ORIGINAL of the foregoing filed this
this 7th day of May, 2021 with:

Arizona Medical Board
1740 W. Adams, Suite 4000
Phoenix, Arizona 85007

COPY of the foregoing filed this
this 7th day of May, 2021 with:

Greg Hanchett, Director
Office of Administrative Hearings
1740 W. Adams
Phoenix, AZ 85007

Executed copies of the foregoing mailed by U.S. Mail and emailed this 7th day of May, 2021 to:

Shakeel A. Kahn, M.D.
Address of Record
Respondent

Carrie H. Smith
Assistant Attorney General
Office of the Attorney General
SGD/LES
2005 N. Central Avenue
Phoenix, AZ 85004

Michelle Rodes

9466060