BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of: **KIRK G. WILLIAMS, M.D.** Holder of License No. 13691 For the Practice of Allopathic Medicine In the State of Arizona,	Case No: 22A-13691-MDX **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (License Revocation)**

On August 4, 2022, this matter came before the Arizona Medical Board ("Board") for consideration of Administrative Law Judge ("ALJ") Tammy L. Eigenheer's proposed Findings of Fact, Conclusions of Law and Recommended Order. Kirk G. Williams, M.D., ("Respondent") did not appear and was not represented by counsel; Assistant Attorney General Seth T. Hargraves represented the State. Assistant Attorney General Monique A. Coady 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

Background and Procedure

1. Kirk G. Williams, M.D. (Respondent) is the holder of Board-issued License No. 13691 for the practice of allopathic medicine in the State of Arizona, which was first issued on October 8, 1982. Unless renewed by February 27, 2022, the license was set to expire on June 27, 2022.

2. Pursuant to A.R.S. § 32-3202, the certificate or license of a health professional who does not renew the certificate or license as prescribed by statute and who has been advised in writing that an investigation is pending at the time the certificate or license is due to expire or terminate does not expire or terminate until the investigation is resolved.

3. The Board referred this matter to the Office of Administrative Hearings (OAH), an independent state agency, for an evidentiary hearing on the allegations and charged acts of unprofessional conduct as defined by A.R.S. § 32-1401(27)(s), (ee), and (jj) as set forth in the Board's March 23, 2022 Complaint and Notice of Hearing for License Revocation.

4. The Complaint and Notice of Hearing for License Revocation set a hearing before OAH at 9:00 a.m. on May 17, 2022. The Board mailed the Complaint and Notice of Hearing for License Revocation to Respondent via certified mail and regular mail to his address of record and to Uchechi M. Megwa, Respondent's counsel, via regular mail and email.

5. On May 10, 2022, Respondent requested that the hearing be continued because he needed time to obtain representation from a new attorney. Respondent asserted that Kraig Marton was going to represent him, but he passed in March 2022.

6. On May 10, 2022, the Board filed an objection to the requested continuance noted that Mr. Marton had not represented Respondent since October 2019 and that at the time of Mr. Marton's death, Respondent was being represented by Mr. Megwa.

7. The Administrative Law Judge denied the requested continuance and the hearing remained scheduled to convene at 9:00 a.m. on May 17, 2022.

8. Respondent did not request to appear telephonically or virtually at the hearing. Although the duly noticed hearing did not convene until 9:20 a.m. and did not conclude until 11:14 a.m., more than two hours after the noticed start time, Respondent did not appear, personally or through an attorney, and did not contact OAH. Consequently, Respondent did not present any evidence to defend his license to practice allopathic medicine in Arizona.

9. The Board submitted 34 exhibits and presented the testimony of Erinn Downey, Physician Health Program Manager with the Board, who investigated the complaints against Respondent.

Hearing Evidence

10. On or about October 30, 2018, the Board initiated case number MD-18-1040A after receiving notification from Curtis McKnight, M.D., a psychiatrist at St. Joseph's Medical Center, that Respondent was undergoing inpatient treatment and may have a health condition that impaired his ability to safely practice medicine. The complaint asserted the following:

> [Respondent] is admitted to St. Joe's Hospital with acute encephalopathy/delirium. His family has reported ever since February 2018 he has subtle memory deficits. There is no specific instance of mis-conduct but he is currently confused, unable to understand that we have him on work restriction and lacks insight into his memory deficits.
> I would suggest a "fitness for duty" or related type of assessment before he returns to practicing medicine.

11. On or about November 14, 2018, Board staff contacted Dr. McKnight's office and was informed that Respondent was still inpatient. Board staff was advised to contact Respondent's social worker.

12. Bonnie Quezada, Respondent's social worker, informed Board staff that Respondent was due to be discharged the following day with 24-hour supervision. Ms. Quezada understood that Respondent and Sylvia Pruitt, his office manager and significant other, intended for Respondent to return to practice. Mr. Quezada stated that, based on the latest progress notes, Respondent was not safe to return to practice.

13. On or about November 14, 2018, Board staff emailed Ms. Pruitt a copy of the Interim Consent Agreement for Practice Limitation for Respondent's review and signature due by November 16, 2018.

14. On or about November 16, 2018, Ms. Pruitt emailed Board staff to relate that Respondent's attorney would be reviewing the Interim Consent Agreement for Practice Limitation on November 21, 2018, and it would be sent to Board staff immediately afterward.

15. Board staff responded that the signed agreement needed to be submitted by 4:00 p.m. that day or the Board would convene to summarily suspend Respondent's license.

16. On or about November 16, 2018, Mr. Marton, Respondent's counsel, emailed Board staff stating that Respondent would not sign the Interim Consent Agreement for Practice Limitation because Respondent felt he was safe to practice. Mr. Marton indicated that Respondent and Dr. McKnight had differences for reasons unrelated to the assessment.

17. On or about November 19, 2018, Mr. Marton emailed Board staff stating that Respondent would be meeting with Will Counts, a pharmacist and psychologist. Mr. Marton represented that if Dr. Counts found that Respondent was not safe to practice, the Respondent would agree to a practice limitation. Later that day, Mr. Marton reported back that Dr. Counts concluded there was no reason to prohibit Respondent from engaging in the practice of medicine.

18. On or about November 27, 2018, Board staff contacted Respondent's office to inquire as to who was covering the practice while Respondent was absent. Respondent's staff reported that Paul Bratcher, the physician assistant, was covering for Respondent, but that Respondent would be returning soon.

19. On or about November 27, 2018, the Executive Director issued an Interim Order for Neuropsychological Evaluation that required Respondent to present for an evaluation within 30 days and to comply with recommendations for additional treatment.

20. On or about November 28, 2018, Mr. Marton notified Board staff that Respondent had scheduled his neuropsychological evaluation for December 18, 2018.

21. On or about December 6, 2018, Mr. Marton notified Board staff that Respondent had continued to see Dr. Counts who now opined that Respondent should not practice medicine and should not undergo a neuropsychological evaluation. Mr. Marton indicated that Respondent was willing to sign the Interim Consent Agreement for Practice Limitation and that he would cancel his appointment for the neuropsychological evaluation.

22. Effective December 12, 2018, Respondent entered into an Interim Consent Agreement for Practice Limitation with the Board, which prohibited him from engaging in the practice of medicine until such time as he received affirmative permission from the Board to do so.

23. On or about December 14, 2018, Ms. Pruitt notified Board staff that Respondent had scheduled the neuropsychological evaluation with H. Daniel Blackwood, Ph.D., on January 23, 2019.

24. On or about January 23, 2019, approximately 30 days after the deadline in the Interim Order, Respondent completed the neuropsychological evaluation.

25. The evaluator concluded the following:

> These results clearly contraindicate the clinical practice of medicine for [Respondent]. He might be able to engage in administrative duties in a practice. He should continue to refrain from driving. Restrictions/limitations are permanent in the absence of any treatable conditions, such as NPH.

26. The evaluator also recommended medication to address cognition and participation in the HABIT program at the May Clinic to address neurocognitive issues.

27. Respondent failed to comply with the evaluator's recommendations for treatment.

28. On or about January 28, 2019, Board staff emailed a copy of the evaluation report to Mr. Marton and asked if Respondent would consider a surrender due to his health condition.

29. On or about January 29, 2019, Respondent contacted Board staff and requested a copy of the evaluation report. Board staff read part of the report addressing his safety to practice to Respondent over the phone. Respondent was upset with the report and requested an opportunity to speak to the Board about his case. Respondent was advised that, based on the evaluation report, the Board was unlikely to approve a request to lift Respondent's limitation to practice.

30. On or about January 21, 2020, Board staff requested a status update from Mr. Marton. Mr. Marton responded that, effective October 3, 2019, he was no longer representing Respondent due to Respondent filing for bankruptcy protection.

31. On or about January 23, 2020, Board staff emailed Respondent through Ms. Pruitt requesting a status update. Respondent replied that he would comply with Board staff's request and take "the exam" a second time.

32. On or about February 14, 2020, Respondent told Board staff that he would be completing another evaluation at St. Joseph's Medical Center. Respondent was advised that the evaluation needed to be completed by a Board-approved evaluator.

33. On or about May 11, 2020, Respondent notified Board staff that he would undergo a neuropsychological evaluation with Dane Higgins, Ph.D., on June 10, 2020. Upon review of Dr. Higgins' CV, the Board's Chief Medical Consultant approved Dr. Higgins to perform the evaluation.

34. On or about May 26, 2020, Board staff provided Dr. Higgins with a copy of the Board's case file and the process for performing a neuropsychological evaluation of Respondent's for the Board's purpose.

35. On or about June 10, 2020, Respondent underwent a second evaluation by a provider not approved by the Board.

36. On or about June 11, 2020, Dr. Higgins informed Board staff that Respondent had not signed any consent forms to allow him to provide a copy of his report to Board staff. Board staff emailed Respondent to remind him that he needed to sign the relevant consents with Dr. Higgins to allow him to provide Board staff with a copy of his report.

37. On or about November 23, 2020, Board staff received a letter from Respondent's new counsel, Uchechi Megwa, requesting that the Board lift Respondent's Interim Consent Agreement for Practice Limitation.

38. On or about November 27, 2020, Board staff emailed Mr. Megwa requesting that Respondent sign a release with Dr. Higgins to allow him to release his report to Board staff so that Board staff could process Respondent's request to lift the limitation. Mr. Megwa did not respond.

39. On or about June 14, 2021, Board staff emailed Mr. Megwa requesting that Respondent sign a release with Dr. Higgins to allow him to release his report to Board staff so that Board staff could process Respondent's request to lift the limitation. Board staff also copied Respondent with the same information. Neither Respondent nor Mr. Megwa responded.

40. On or about July 6, 2021, Board staff obtained through a subpoena a copy of Dr. Higgins' Neuropsychological Evaluation Report dated June 10, 2020.

41. The evaluation included the following summary and recommendations:

> Given [Respondent's] history, and the current report/pattern of his neuropsychological impairments, his observed functioning would place him at a **Global deterioration Scale stage of . . . 4**, which represents moderate cognitive decline and a mild level of dementia, Specifically, [Respondent] is demonstrating symptoms associated with dementia of mixed etiology. He exhibited symptomatology of deficits consistent with a vascular

pathogenesis (i.e., subcortical deficits); that is to say, characteristic of Vascular Dementia (i.e., Dementia, Vascular Type; also known as Arteriosclerotic Dementia; previously known as Multi-Infarct Dementia.) This is likely related to his history of suffering past strokes. Nevertheless, he is also now demonstrating neuropsychological symptoms implicating diffuse cortical dysfunction; suggesting a cortical dementia process; that is to say, he exhibits symptoms of Alzheimer's Disease (i.e. Dementia, Alzheimer's Type) via a pattern of performance on neurocognitive testing. . . . Although his current performance on neuropsychological measures was within normal limits across several neurocognitive domains, he exhibits other deficits in specific areas of neurocognitive functioning. Further, as information he is trying to store/encode becomes more complex or is unorganized (i.e. if he is required to organize the information to process it) then his performance drops significantly. . . .

[Respondent] would benefit from immediate pharmacological treatment of his dementia condition. . . .

Generally, [Respondent] exhibited an impaired level of awareness of the existence, the significance, and severity of his profound neurocognitive deficits.

42. On or about July 6, 2021, Board staff again emailed Respondent and Mr. Megwa requesting a response by July 14, 2021, regarding his interest in a Final Practice Limitation or surrender.

43. Neither Mr. Megwa or Respondent responded by July 14, 2021.

44. On or about July 23, 2021, Board staff emailed Mr. Megwa indicating it was granting an extension of the deadline for a response until August 6, 2021.

45. On or about September 3, 2021, Respondent's case went before the Board's Staff Investigational Review Committee (SIRC). SIRC recommended that Respondent's license be revoked, but that Respondent be offered the opportunity to surrender his license in lieu of formal proceedings to revoke the license.

46. On or about October 15, 2021, Board staff notified Mr. Megwa of the SIRC recommendation that Respondent's license be revoked. Board staff indicated that, as an alternative to a formal hearing, Respondent could enter into a consent agreement

including the surrender of Respondent's medical license. Respondent was given 10 days to sign and return the consent agreement to the Board.

47. On or about October 20, 2021, Respondent was granted a one-time extension to reply until November 9, 2021.

48. On or about November 18, 2021, Mr. Megwa notified Board staff that Respondent had decided against signing the consent agreement and wished to move forward with the hearing process.

CONCLUSIONS OF LAW

1. The Board is the duly constituted authority for licensing and regulating the practice of allopathic medicine in the State of Arizona. This matter lies within its jurisdiction.[1]

2. The Complaint and Notice of Hearing that the Board mailed to Respondent at his address of record was reasonable and Respondent is deemed to have received notice of the hearing.[2]

3. 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.[3] Clear and convincing evidence is "[e]vidence indicating that the thing to be proved is highly probable or reasonably certain."

4. Pursuant to A.R.S. § 32-2501(13), a "Physician assistant" is defined as "a person who is licensed pursuant to this chapter and who practices medicine with physician supervision."[4]

5. The Board established by clear and convincing evidence that Respondent failed to timely undergo a neuropsychological evaluation within 30 days as ordered in the

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[1] *See* A.R.S. § 32-1401 *et seq.*
[2] *See* A.R.S. §§ 41-1092.04; 41-1092.05(D).
[3] *See* A.R.S. §§ 41-1092.07(G)(2) and 32-1451.04; A.A.C. R2-19-119(B)(1); *see also Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).
[4] BLACK'S LAW DICTIONARY at 596 (8th ed. 1999).

November 27, 2018 Interim Order for Neuropsychological Evaluation and failed to comply with the recommendations for additional treatment. Therefore, the Board established that Respondent committed unprofessional conduct as defined by A.R.S. § 32-1401(27)(s) ("Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter").

6. The Board established by clear and convincing evidence that Respondent failed to sign a release of information that would allow Dr. Higgins to furnish the results of the June 10, 2020 neuropsychological evaluation to the Board as requested. Therefore, the Board established that Respondent committed unprofessional conduct as defined by A.R.S. § 32-1401(27)(ee) ("Failing to furnish information in a timely manner to the board or the board's investigators or representatives if legally requested by the board").

7. The Board established by clear and convincing evidence that, while Respondent was receiving inpatient treatment, Respondent allowed a physician assistant to "cover" Respondent's medical practice. Therefore, the Board established that Respondent committed unprofessional conduct as defined by A.R.S. § 32-1401(27)(jj) ("Exhibiting a lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician").

8. Respondent's ongoing delays in response to Board communications and failure to attend the hearing indicate that he cannot be regulated at this time.

ORDER

Based on the foregoing, it is ordered that on the effective date of the final order in this matter, Kirk G. Williams, M.D.'s License No. 13691 for the practice of allopathic medicine in the State of Arizona shall 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 5th day of August 2022.

THE ARIZONA MEDICAL BOARD

By Patricia E McSorley
Patricia E. McSorley
Executive Director

ORIGINAL of the foregoing filed this 5th day of August, 2022 with:

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Executed copy of the foregoing
mailed by U.S. Mail and emailed
this 5th day of August, 2022 to:

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