

1 **BEFORE THE REVIEW COMMITTEE OF THE ARIZONA MEDICAL BOARD**

2 In the Matter of
3 **WALTER N. SIMMONS, M.D.**
4 Holder of License No. 29610
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-21-0347A

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR LETTER
OF REPRIMAND AND PROBATION**

7 The Review Committee of the Arizona Medical Board ("Board") considered this
8 matter at its public meeting on August 3, 2022. Walter N. Simmons, M.D. ("Respondent"),
9 appeared before the Review Committee for a Formal Interview pursuant to the authority
10 vested in the Board by A.R.S. § 32-1451(P). The Review Committee voted to issue
11 Findings of Fact, Conclusions of Law and Order after due consideration of the facts and
12 law applicable to this matter.

13 **FINDINGS OF FACT**

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

16 2. Respondent is the holder of license number 029610 for the practice of
17 allopathic medicine in the State of Arizona.

18 3. The Board initiated case number MD-21-0347A after receiving a notification
19 from Respondent that he had pled guilty to three misdemeanor violations of HIPAA for the
20 wrongful use of a health identifier.

21 4. On March 10, 2021 in *United States v. Simmons*, No. 3:16-CR-60-M (N.D.
22 Tex), Respondent entered into a plea agreement to three misdemeanor counts of violating
23 48 U.S.C. § 1320d-6(a)(1) and (b)(1), Wrongful Use of a Unique Health Identifier. The
24 charges arose out of allegations that Respondent wrote prescriptions for topical pain
25 medications to TRICARE beneficiaries without properly establishing a physician-patient
 relationship for patients located in states where Respondent was not licensed to practice

1 medicine. Respondent was subsequently sentenced pursuant to that plea to terms and
2 conditions including a nine month term of imprisonment, and payment of restitution to the
3 Defense Health Agency.

4 5. Other States have taken action against Respondent's licensure as follows:

5 a. On July 12, 2021, Respondent entered into a Non Disciplinary Stipulation
6 and Order with The Division of Occupational and Professional Licensing
7 for the Utah Department of Commerce in Case No. DOPL 2021-223 for
8 the surrender of his Utah medical license.

9 b. On December 10, 2021, Respondent entered into an Agreed Order with
10 the Texas Medical Board for a Public Reprimand and stayed suspension
11 probation requiring Respondent to comply with the terms and conditions
12 of the judgment entered against him in criminal courts.

13 c. Effective January 5, 2022, Respondent entered into an Agreed Order
14 Imposing Stipulations on License with the New Mexico Medical Board in
15 Case No. 2021-039, pursuant to which Respondent inactivated his New
16 Mexico medical license while incarcerated, and agreed to other terms and
17 conditions of probation, including a public reprimand, a permanent
18 practice restriction prohibiting Respondent from prescribing compound
19 medications to patients in New Mexico, completion of the ProBE Ethics
20 Course offered by the Center for Personalized Education for Physicians
21 ("CPEP") and use of a practice monitor for an indefinite period of time.

22 d. On January 25, 2022, Respondent entered into a Consent Order with the
23 Tennessee Board of Medical Examiners that suspended his Tennessee
24 medical license for the duration of his incarceration, and placed it on
25 probation for a subsequent two years with terms and conditions including

1 completion of an intensive, in person Continuing Medical Education
2 (“CME”) course in medical ethics, and payment of civil penalties.

3 6. Effective March 20, 2022 The Office of Inspector General (“OIG”) of the
4 Department of Health and Human Services issued an order excluding Respondent from
5 participation in all Federal health care programs, as defined in section 1128B(f) of the
6 Social Security Act.

7 7. Respondent completed his term of incarceration on April 14, 2022.

8 8. During a Formal Interview on this matter, Respondent testified regarding the
9 underlying case. Respondent noted the non-disciplinary nature of the Utah action, and
10 stated that he had appealed the OIG order of exclusion. Respondent noted that he pled
11 guilty to three misdemeanor charges, and admitted that he did not report the charges
12 within 10 days. Respondent explained the circumstances that gave rise to his criminal
13 charges, and denied participating in any fraud. Board staff noted a second superseding
14 indictment charging Respondent with felony charges that were not timely reported to the
15 Board. Board staff additionally noted that a jury was unable to reach a verdict regarding
16 the charges, and that the plea agreement reported to the Board occurred after the trial.
17 Respondent disputed allegations made against him during the criminal trial process.
18 Respondent reported that he was scheduled to take the ProBE course in ten days.
19 Respondent stated that he paid both the restitution and the fine imposed as part of his
20 sentence. Respondent testified regarding his lack of prior discipline and current personal
21 circumstances.

22 9. During that same Formal Interview, Review Committee members recognized
23 Respondent’s remediation, but agreed that the case rose to the level of discipline based
24 on the seriousness of the violations. The Committee voted unanimously to issue a Letter
25

1 of Reprimand and probation to comply with the requirements of the Tennessee Board
2 Order.

3 **CONCLUSIONS OF LAW**

4 a. The Board possesses jurisdiction over the subject matter hereof and over
5 Respondent.

6 b. The conduct and circumstances described above constitute unprofessional
7 conduct pursuant to A.R.S. § 32-1401(27)(a) ("Violating any federal or state laws or rules
8 and regulations applicable to the practice of medicine."). Specifically, Respondent's
9 conduct violated 42 U.S.C. § 1320d-6(a)(l), (b)(1) ("(a) Offense. A person who knowingly
10 and in violation of this part--(1) uses or causes to be used a unique health identifier;...shall
11 be punished as provided in subsection (b). For purposes of the previous sentence, a
12 person (including an employee or other individual) shall be considered to have obtained or
13 disclosed individually identifiable health information in violation of this part if the
14 information is maintained by a covered entity (as defined in the HIPAA privacy regulation
15 described in section 1320d-9(b)(3) of this title) and the individual obtained or disclosed
16 such information without authorization. (b) Penalties. A person described in subsection (a)
17 shall-- (1) be fined not more than \$50,000, imprisoned not more than 1 year, or both.) and
18 A.R.S. § 32-3208(A) ("A health professional who has been charged with a misdemeanor
19 involving conduct that may affect patient safety or a felony after receiving or renewing a
20 license or certificate must notify the health professional's regulatory board in writing within
21 ten working days after the charge is filed.").

22 c. The conduct and circumstances described above constitute unprofessional
23 conduct pursuant to A.R.S. § 32-1401(27)(p) ("Action that is taken against a doctor of
24 medicine by another licensing or regulatory jurisdiction due to that doctor's mental or
25 physical inability to engage safely in the practice of medicine, the doctor's medical

1 incompetence or for unprofessional conduct as defined by that jurisdiction and that
2 corresponds directly or indirectly to an act of unprofessional conduct prescribed by this
3 paragraph. The action taken may include refusing, denying, revoking or suspending a
4 license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise
5 limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on
6 probation by that jurisdiction.”).

7 d. The conduct and circumstances described above constitute unprofessional
8 conduct pursuant to A.R.S. § 32-1401(27)(q)(“ Having sanctions imposed by an agency of
9 the federal government, including restricting, suspending, limiting or removing a person
10 from the practice of medicine or restricting that person's ability to obtain financial
11 remuneration.”).

12 **ORDER**

13 IT IS HEREBY ORDERED THAT:

- 14 1. Respondent is issued a Letter of Reprimand.
15 2. Respondent is placed on Probation for a period of 2 years with the following terms
16 and conditions:

17 **a. Compliance with Tennessee Board Order**

18 Respondent shall remain in compliance with the terms and conditions of the
19 Tennessee Board Order entered on January 25, 2022. Respondent shall immediately
20 provide the Tennessee Board with a copy of this Order and cause the Tennessee Board or
21 its designee to provide written quarterly reports to Board staff regarding Respondent's
22 compliance with the Tennessee Board Order. Respondent shall immediately notify Board
23 staff if Respondent is non-compliant with any aspect of monitoring requirements of the
24 Tennessee Board Order. Any violation of the Tennessee Board Order will be deemed non-
25 compliance with this Order.

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b. Obey All Laws

Respondent shall obey all state, federal and local laws, all rules governing the practice of medicine in Arizona, and remain in full compliance with any court ordered criminal probation, payments and other orders.

c. Probation Termination

Prior to the termination of Probation, Respondent must submit a written request to the Board for release from the terms of this Order. Respondent's request for release will be placed on the next pending Board agenda, provided a complete submission is received by Board staff no less than 30 days prior to the Board meeting. Respondent's request for release must provide the Board with evidence establishing that he has successfully satisfied all of the terms and conditions of this Order. The Board has the sole discretion to determine whether all of the terms and conditions of this Order have been met or whether to take any other action that is consistent with its statutory and regulatory authority.

1 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

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

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

11 DATED AND EFFECTIVE this 7th day of October, 2022.

12 ARIZONA MEDICAL BOARD

13
14 By Patricia E. McSorley
15 Patricia E. McSorley
16 Executive Director

17 EXECUTED COPY of the foregoing mailed
18 this 7th day of October, 2022 to:

19 Walter N. Simmons, M.D.
20 Address of Record

21 ORIGINAL of the foregoing filed
22 this 7th day of October, 2022 with:

23 Arizona Medical Board
24 1740 West Adams, Suite 4000
25 Phoenix, Arizona 85007

Michelle Robles
Board staff