

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

**ERICK A. FALCONER, M.D.**

Holder of License No. 45505  
For the Practice of Allopathic Medicine

In the State of Arizona.

**Case No: MD-13-1181**

**ORDER RESCINDING SUMMARY  
SUSPENSION AND INTERIM FINDINGS  
OF FACT, CONCLUSIONS OF LAW AND  
ORDER FOR SUMMARY PRACTICE  
RESTRICTION**

**INTRODUCTION**

The above-captioned matter came for discussion before the Arizona Medical Board ("Board") at a special teleconference Board meeting on December 18, 2013 to consider rescission of a December 11, 2013 Order of Summary Suspension entered against Erick A. Falconer, M.D. ("Respondent"). The Board convened the special meeting to consider a December 13, 2013 temporary restraining order issued by an Illinois court restoring Respondent's previously suspended Illinois medical license, but restricting his practice. After reviewing relevant information and deliberating, the Board voted to rescind its December 11, 2013 summary suspension order against Respondent and to impose a practice restriction on Respondent's medical Arizona license instead. Having considered the information in the matter and being fully advised, the Board enters the following Interim Findings of Fact, Conclusions of Law and Order for Summary Practice Restriction, pending formal hearings or other Board action. A.R.S. § 32-1451(D).

**INTERIM FINDINGS OF FACT**

1. The Board is the duly constituted 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. 45505 for the practice of allopathic medicine in the State of Arizona.

1           3.     The Board initiated case number MD-13-1181, after receiving notice from  
2 Respondent's attorney that it was anticipated that Respondent would be charged with  
3 allegedly making a material false statement and representation to special agents of the  
4 U.S. Food and Drug Administration (FDA).

5           4.     Subsequently, the Respondent's attorney notified the Board that on  
6 November 6, 2013, Respondent pled guilty to felony charges related to false statements  
7 made to the FDA related to his purchase of Botox. Respondent's statement that he  
8 purchased three orders of Botox in a three month period in 2012 was false and made in  
9 order to influence the FDA investigation. Respondent had actually made 50 purchases of  
10 Botox from 2009 to 2012.

11           5.     The Illinois Department of Financial and Professional Regulations, Division of  
12 Professional Regulation (Illinois Board) found that the public interest, safety and welfare  
13 imperatively required emergency action, in that Respondent's continued practice of  
14 medicine constitutes an immediate danger to the public. On December 3, 2013, the Illinois  
15 Board issued a summary suspension of the Respondent based on the voluntary plea of  
16 guilty to the felony charges and also additional findings related to the Respondent's license  
17 history in Missouri.

18           6.     Presently, the Missouri State Board of Registration for Healing Arts has a  
19 formal complaint pending against Respondent based on the following allegations related to  
20 Respondent's practice of medicine:

- 21                   a. Respondent repeatedly fell below the standard of care and was  
22                   negligent in maintaining adequate and complete patient records  
23                   during his procedures;
- 24                   b. Respondent repeatedly enticed and misled patients into false  
25                   expectations to solicit business;

- c. Respondent repeatedly failed to use the degree of skill used under similar circumstances by members of his profession;
- d. Respondent repeatedly abused the professional trust of the physician-patient relationship for the purpose of engaging in sexual activity;
- e. Respondent lied on his Missouri medical license renewal application;
- f. Respondent did not appropriately treat a patient in the course of his duties as an Emergency Room physician ultimately leading to patient's death;
- g. Respondent's Missouri Controlled Substance Registration was disciplined by the Missouri Bureau of Narcotics and Dangerous Drugs in May 2012.

7. On May 11, 2012, the Missouri Board of Narcotics and Dangerous Drugs (BNDD) issued a Missouri Controlled Substance Registration to Respondent and placed said Registration on three year Probation after the BNDD investigation revealed multiple violations related to dispensing, safeguarding, record-keeping and failing to provide effective controls to guard against the diversion of controlled substances by Respondent.

8. On December 11, 2013, the Board considered the foregoing Interim Findings of Fact and voted to summarily suspend Respondent's license. An Order for Summary Suspension of Respondent's license was signed by the Board's acting Executive Director on December 17, 2013.

9. On December 13, 2013, the Circuit Court of the Seventh Judicial Circuit in Sangamon County Illinois entered a temporary restraining order, which reinstates Respondent's medical license, but restricts him to the practice of emergency medicine only and prohibits the administration of Botox.

1 **INTERIM CONCLUSIONS OF LAW**

2 1. The Board possesses jurisdiction over the subject matter hereof and over  
3 Respondent, holder of License No. 45505 for the practice of allopathic medicine in the  
4 State of Arizona.

5 2. The conduct and circumstances described above constitute unprofessional  
6 conduct pursuant to A.R.S. § 32-1401(27)(d)("[c]ommitting a felony, whether or not  
7 involving moral turpitude, or a misdemeanor involving moral turpitude. In either case,  
8 conviction by any court of competent jurisdiction or a plea of no contest is conclusive  
9 evidence of the commission.")

10 3. The conduct and circumstances described above constitute unprofessional  
11 conduct pursuant to A.R.S. § 32-1401(27)(o)("[a]ction that is taken against a doctor of  
12 medicine by another licensing or regulatory jurisdiction due to that doctor's mental or  
13 physical inability to engage safely in the practice of medicine or the doctor's medical  
14 incompetence or for unprofessional conduct as defined by that jurisdiction and that  
15 corresponds directly or indirectly to an act of unprofessional conduct prescribed by this  
16 paragraph. The action taken may include refusing, denying, revoking or suspending a  
17 license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise  
18 limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on  
19 probation by that jurisdiction.")

20 5. Based on the foregoing Interim Findings of Fact and Conclusions of Law, the  
21 public health, safety or welfare imperatively requires emergency action. A.R.S. § 32-  
22 1451(D).

23 **ORDER**

24 Based on the foregoing Interim Findings of Fact and Conclusions of Law, set forth  
25 above,

1 IT IS HEREBY ORDERED THAT:

2 1. The Interim Order dated December 17, 2013, summarily suspending  
3 Respondent's license to practice medicine in Arizona is rescinded.

4 2. Respondent's license to practice allopathic medicine in the State of Arizona,  
5 License No. 45505, is summarily restricted in that Respondent may only practice  
6 emergency medicine through his practice group and he may not administer Botox during  
7 the pendency of this order.

8 3. The Interim Findings of Fact and Conclusions of Law constitute written notice  
9 to Respondent of the charges of unprofessional conduct made by the Board against him.  
10 Respondent is entitled to a formal hearing to defend these charges as expeditiously as  
11 possible after the issuance of this order.

12 4. The Board's Executive Director is instructed to refer this matter to the Office  
13 of Administrative Hearings for scheduling of an administrative hearing to be commenced  
14 as expeditiously as possible from the date of the issuance of this order, unless stipulated  
15 and agreed otherwise by Respondent.

16 DATED this 19<sup>th</sup> day of December, 2013.

17 ARIZONA MEDICAL BOARD

18  
19 By: Patricia McSorley  
20 Patricia McSorley  
21 Interim Acting Executive Director

22 ORIGINAL of the foregoing filed this  
23 19<sup>th</sup> day of December, 2013, with:

24 The Arizona Medical Board  
25 9545 E. Doubletree Ranch Road  
Scottsdale, AZ 85258

1 Executed copy of the foregoing mailed by Certified  
Mail this 19<sup>th</sup> day of December, 2013, to:

2 Jim Miles  
3 Miles & Peters  
4 1 E. Washington St. Ste. 500  
Phoenix AZ 85004

5 Executed copy of the foregoing mailed by certified  
6 mail this 19<sup>th</sup> day of December, 2013, to:

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8 Mary Peters

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