

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

Case No.15A-25811-MDX

3 **GEORGE F. GWINN, M.D.,**

4 Holder of License No. 25811
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
(Revocation)**

7 On April 1, 2015, this matter came before the Arizona Medical Board ("Board") for
8 consideration of the Administrative Law Judge (ALJ) Diane Mihalsky's proposed Findings
9 of Fact, Conclusions of Law and Recommended Order. George F. Gwinn, M.D.,
10 ("Respondent") did not appear before the Board; Assistant Attorney General Carrie H.
11 Smith, represented the State. Christopher Munns with the Solicitor General's Section of
12 the Attorney General's Office, was available to provide independent legal advice to the
13 Board.

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

16 **FINDINGS OF FACT**

17 1. Respondent is the holder of Board-issued License No. 25811 for the practice of
18 allopathic medicine in the State of Arizona.

19 2. The Board referred this matter to the Office of Administrative Hearings ("OAH"),
20 an independent state agency, for an evidentiary hearing.

21 3. On January 14, 2015, the Board issued a Complaint and Notice of Hearing that
22 alleged certain facts, based on those facts, charged Respondent with having committed
23 unprofessional conduct as defined by A.R.S. § 32-1401(27)(q) and (r), and provided notice
24 of a hearing in the OAH on February 19, 2015, at 9:00 a.m. The Board sent the Complaint
25 and Notice of Hearing by United States regular and first-class mail to Respondent at his
address of record.

4. A hearing was held on February 19, 2015. The Board submitted seventeen
exhibits and presented the testimony of four witnesses: (1) Aaron Vincent Riley, MD, an

1 inpatient attending psychiatrist at Desert Vista Hospital, a behavioral health facility that is
2 part of Maricopa Integrated Health System ("MIHS"); (2) Stephanie Markman, MD, the
3 head of the family medical department at the Phoenix Indian Medical Center; (3) Michael
4 Sucher, MD, the Board's consultant on managing the practices of physicians with
5 substance abuse and/or behavioral health issues; (4) Elle Steger, CMBI, the Board's
Investigator.

6 5. Respondent did not request to appear telephonically at the hearing and did not
7 request that the hearing be continued. Although the start of the duly noticed hearing was
8 delayed nineteen minutes to allow Respondent additional travel time, Respondent did not
9 appear, personally or through an attorney, and did not contact the OAH to request that the
10 start of the hearing be further delayed. Consequently, Respondent did not present any
evidence to defend his medical license.

11 HEARING EVIDENCE

12 6. On December 3, 2014, Respondent was involuntarily admitted to MIHS's Desert
13 Vista Hospital for a court-ordered evaluation. Respondent's associates had petitioned the
14 court for the evaluation after he wandered away from his ex-wife's house and two days
later, police found him disoriented, without a shirt or shoes, waving at traffic.

15 7. Respondent appeared confused and paranoid and was uncooperative with
16 treatment at Desert Vista Hospital. No evidence suggested that Respondent had ingested
17 any substance that could produce symptoms that mimicked a mood disorder. Although he
18 was provisionally diagnosed with bipolar disorder, he resisted that diagnosis and refused to
19 accept a prescription for or to take psychotropic medication that could manage his
20 behavioral health symptoms. Respondent was only agreeable to taking sedatives because
he complained that he had been unable to sleep for several days.

21 8. Respondent was not determined to be Seriously Mentally Ill or eligible for the
22 Arizona Health Care Cost Containment System, which is required for continued court-
23 ordered treatment. On or about December 9, 2015, Respondent was discharged from
24 Desert Vista Hospital with the recommendation that he follow up closely with a psychologist
and psychiatrist.

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1 9. Respondent never followed up with the psychiatrist to whom his treating
2 psychiatrist at Desert Vista Hospital had referred him.

3 10. On or about December 8, 2014, MIHS filed a complaint against Respondent
4 with the Board pursuant to A.R.S. § 32-1451.¹

5 11. On or about December 9, 2014, the Board sent Respondent a Notice of
6 Investigation into MIHS's complaint.

7 12. In December 2014, Respondent was a contract physician at the Phoenix Indian
8 Medical Center. Respondent missed his scheduled December 4, 2014 clinic without
9 providing any notice. Respondent appeared for his scheduled December 11, 2014 clinic,
10 stating that he had been in the hospital.

11 13. On or about December 12, 2014, Respondent was given an Interim Consent
12 Agreement for Practice Limitation that he was required to sign and return to the Board on
13 or before December 15, 2014. Respondent did not return the Interim Consent Agreement
14 for Practice Limitation and failed to cooperate with the Board's staff's numerous attempt to
15 contact him.

16 14. On December 16 and 17, 2014, Board staff attempted to contact Respondent
17 through his answering service, physician's assistant, and office manager, but none of these
18 individuals knew how to contact Respondent.

19 15. On December 17, 2014, the Board issued an Interim Order for Physician Health
20 Program Assessment that required Respondent to undergo and successfully complete an
21 assessment with the Board's PHP contractor by no later than 3:00 p.m. on December 18,
22 2014. The Board served the Interim Order on Respondent by mail at his address of record
23 and by facsimile at his office. Respondent failed to comply with the Board's December 17,
24 2014 Interim Order.

25 ¹ A.R.S. § 32-1451(B) provides in relevant part as follows:

 The chief executive officer, the medical director or the medical chief of
staff of a health care institution shall inform the board if the privileges of a
doctor to practice in that health care institution are denied, revoked,
suspended or limited because of actions by the doctor that appear to show
that the doctor is or may be medically incompetent, is or may be guilty of
unprofessional conduct or is or may be mentally or physically unable to
safely engage in the practice of medicine. . . .

1 2. The Board is the duly constituted authority for licensing and regulating the
2 practice of allopathic medicine in the State of Arizona. This matter lies within its
3 jurisdiction.³

4 3. The Board bears the burden of proof to establish cause to sanction
5 Respondent's license by clear and convincing evidence.⁴ Clear and convincing evidence
6 is "[e]vidence indicating that the thing to be proved is highly probably or reasonably
7 certain."⁵

8 4. The Board established by clear and convincing evidence that Respondent is
9 unable to safely engage in the practice of medicine due to his unresolved behavioral
10 health issues. Therefore, the Board established that Respondent has engaged in
11 unprofessional conduct as defined by A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice
12 that is or might be harmful or dangerous to the health of the patient or the public.").

13 5. The Board also established by clear and convincing evidence that in light of
14 Respondent's unresolved behavioral health issues and failures to respond to the Board's
15 inquiries or to comply with the Board's orders, the public health, safety, or welfare
16 required the Board to summarily suspend Respondent's license.

17 6. The Board also established by clear and convincing evidence that Respondent
18 failed to comply with the Board's December 17, 2014 Interim Order for Physician Health
19 Program Assessment. Therefore, the Board established that Respondent committed
20 unprofessional conduct as defined by A.R.S. § 32-1401(27)(q) ("[v]iolating a formal order,
21 probation, consent agreement or stipulation issued or entered into by the board or its
22 executive director under this chapter.").

23 7. Respondent chose to ignore the Board's repeated messages, refused to
24 contact with the Board, and failed to appear for the duly noticed hearing. These actions,
25 combined with his refusal to seek treatment for his unresolved behavioral health issues,
show that he cannot be regulated at this time.

³ See A.R.S. § 32-1401 *et seq.*

⁴ See A.R.S. §§ 41-1092.07(G)(2) and 32-1451.04; *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁵ BLACK'S LAW DICTIONARY at 596 (8th ed. 1999).

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ORDER

Based on the foregoing, it is recommended that the Board affirm its December 19, 2014 order summarily suspending Respondent George F. Gwinn, MD's License No. 25811 for the practice of allopathic medicine in the State of Arizona.

It is further recommended that Board revoke Respondent's license.

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 2nd day of April, 2015.

THE ARIZONA MEDICAL BOARD

By Patricia E. McSorley
Patricia E. McSorley
Executive Director

1 ORIGINAL of the foregoing filed this
2 2nd day of April, 2015 with:

3 Arizona Medical Board
4 9545 East Doubletree Ranch Road
5 Scottsdale, Arizona 85258

6 COPY of the foregoing filed this
7 2nd day of April, 2014 with:

8 Greg Hanchett, Director
9 Office of Administrative Hearings
10 1400 W. Washington, Ste 101
11 Phoenix, AZ 85007

12 Executed copy of the foregoing
13 mailed by U.S. Mail this
14 2nd day of April, 2014 to:

15 George F. Gwinn, M.D.
16 Address of Record

17 Carrie H. Smith
18 Assistant Attorney General
19 Office of the Attorney General
20 CIV/LES
21 1275 W. Washington
22 Phoenix, AZ 85007

23 Mary Boben
24 Board Staff

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