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.14A-45505-MDX-RHG **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (Revocation)**

On December 1, 2015, this matter came before the Arizona Medical Board ("Board") for consideration of the Administrative Law Judge (ALJ) Tammy L. Eigenheer's proposed Findings of Fact, Conclusions of Law and Recommended Order. Erick A. Falconer, M.D., ("Respondent") was not present; Assistant Attorney General Mary D. Williams, represented the State. Christopher Munns with the Solicitor General's Section of the Attorney General's Office, 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

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

2. Erick A. Falconer, M.D. (Respondent) is the holder of License No. 45505 for the practice of allopathic medicine in Arizona.

3. On or about May 17, 2010, the Missouri State Board of Registration for the Healing Arts (the Missouri Board) notified Respondent via letter that it had received a complaint against him by M.S. and that he would be contacted to discuss the complaint in further detail. The complaint was designated as case number 2010-001195. Exhibit 5.[1]

4. On or about February 10, 2011, Respondent sent a letter to the Missouri Board "responding to the complaint(s) made by [J.Y.]" in case number 2010-007300. Exhibit 8.

---

[1] The underlying allegations of the complaints were not the basis of the action taken by the Arizona Board.

5. On or about May 27, 2011, the Missouri Board issued a subpoena duces tecum to Respondent in case number 2011-002454 regarding patient A.B.'s complaint about a procedure performed by Respondent. On or about July 8, 2011, Respondent sent a letter to the Missouri Board in which he stated, "Thank you for allowing me the opportunity to respond to this complaint presented to the Missouri Board of Healing [A]rts." Exhibit 6.

6. On or about September 9, 2011, the Missouri Board issued a subpoena duces tecum to Respondent in case number 2011-004458 regarding patient M.A.'s complaint about a procedure performed by Respondent. On or about September 19, 2011, Respondent sent a letter to the Missouri Board in which he stated, "Thank you for allowing me the opportunity to respond to this complaint presented to the Missouri Board of Healing [A]rts." Exhibit 7.

7. On or about October 5, 2011, Respondent submitted an Initial License Application (Application) to the Arizona Board. Respondent answered "No" to the question, "Have you been the subject of disciplinary action or are you currently under investigation with regard to your healthcare license (other than by the Arizona Medical Board), have you been sanctioned by any healthcare licensing authority, healthcare association, license[d] healthcare facility or healthcare staff of such facility?" Respondent also answered "No" to the question, "Are there any pending complaints, investigations, or disciplinary actions against you with any healthcare licensing authority, healthcare association, licensed healthcare facility or healthcare staff of such facility." The Application, signed by Respondent, included an attestation on the signature page that provided:

> **I ATTEST THAT ALL INFORMATION SUBMITTED ON AND WITH THIS APPLICATION IS TRUE.** I am the person herein named subscribing to this application; I have read the statutes and rules regarding licensure and have read the complete application, know the full content thereof, and declare that all of the information contained herein and evidence or other credentials submitted herewith are true and correct. I am the lawful holder of the degree of Doctor of Medicine as prescribed by this application, that the same was procured in the regular course of instruction and examination, and that it, together with all the credentials submitted, were procured without fraud or misrepresentation or any mistake of which I am aware. I further acknowledge that falsification or misrepresentation of any

item or response on this application is adequate to deny the application or to hold a hearing to revoke the license, if issued.

Exhibit 3.

8. On or about November 21, 2011, the Missouri Board filed a Complaint in case number 11-2257 against Respondent alleging Respondent committed unprofessional conduct. Exhibit 5.

9. On February 21, 2012, Respondent completed an online Renewal Application (Renewal) for the Arizona Board. Respondent answered "No" to the question, "Since your last renewal have you been the subject of disciplinary action or are you currently under investigation with regard to your healthcare license (other than by the Arizona Medical Board), have you been sanctioned by any healthcare licensing authority, healthcare association, licensed healthcare facility or healthcare staff of such facility?" Exhibit 4.

10. On or about May 11, 2012, Respondent entered into a Settlement Agreement with the Missouri Department of Health and Senior Services, Bureau of Narcotics and Dangerous Drugs, in which the parties agreed that Respondent would be granted a new Missouri Controlled Substances Registration, under probation. Exhibit 10.

11. In November 2013, Respondent's attorney notified the Arizona Board that Respondent anticipated that he would be charged with making a materially false statement and representation to special agents from the U.S. Food and Drug Administration (FDA). As a result of the notification, the Arizona Board initiated an investigation.

12. Respondent's attorney notified the Arizona Board that, on November 6, 2013, Respondent entered a guilty plea in the U.S. District Court, Eastern District of Missouri, and was convicted of Making a False Statement, a felony, in violation of 18 U.S.C. § 1001(a)(2) (Missouri Criminal Case). Specifically, when special agents of the FDA asked Respondent about his medical practice, the Youthful Body, Inc., making purchases of Botox from an unlicensed wholesale drug distributor, Respondent stated that his medical practice had made only three purchases in a three month period in 2012 when he knew

his medical practice had actually made over 50 purchases between 2009 and 2012 from the unlicensed wholesale drug distributor.[2]

13. On December 3, 2013, the Illinois Department of Financial and Professional Regulations, Division of Professional Regulation determined that, based on the Missouri Criminal Case, the public interest, safety, and welfare imperatively required emergency action to prevent Respondent's continued practice in that Respondent's actions constituted an immediate danger to the public and temporarily suspended Respondent's Illinois Physician and Surgeon license and his Illinois Controlled Substance License. Exhibit 2.

14. On or about December 11, 2013, the Arizona Board considered Respondent's case and voted to summarily suspend Respondent's license. An order for Summary Suspension of Respondent's license was signed by the Arizona Board's Acting Executive Director on or about December 17, 2013.

15. On December 13, 2013, the Circuit Court of the Seventh Judicial Circuit in Sangamon County, Illinois, entered a temporary restraining order that reinstated Respondent's Illinois medical license, but restricted him to the practice of emergency medicine only and prohibited the administration of Botox. Exhibit F.

16. On or about December 19, 2013, the Arizona Board considered Respondent's case and voted to rescind the summary suspension. The Arizona Board summarily restricted Respondent's license to limit him to the practice of emergency medicine only and prohibited the administration of Botox. Exhibit 11.

17. At some point during its investigation, the Arizona Board included a new allegation that Respondent failed to disclose the pending investigations in Missouri on the Application and Renewal to the Arizona Board. On or about February 14, 2014, after being notified of the new allegation, Respondent emailed a response to Arizona Board Investigator, Erinn Downey. In the response, Respondent stated:

---

[2] Despite Respondent's arguments to the contrary, the actual purchase of Botox was not a basis of the action taken by the Arizona Board.

> I have reviewed the application and renewal application that you provided. The initial Arizona application was completed by a third party on my behalf. I did review and sign the document. I did complete the online renewal application myself. I did not knowingly make any false or misleading statement on the initial Arizona medical application or the renewal application. It was an error that I did not pick up on the initial application that was completed by a third party. I did complete the renewal application's "yes or no" questions and any response that the board feels was false was at most an error in my interpretation of the question and not an attempt to make a false or misleading statement.

Exhibit 12.[3]

18. On February 21, 2014, Respondent was sentenced to five months in federal prison and one year of supervised probation in the Missouri Criminal Case. Exhibit 1.

19. On April 23, 2014, Respondent's license to practice allopathic medicine in Illinois was indefinitely suspended. Exhibit 2.

20. On November 25, 2014, the Missouri Board entered a Disciplinary Order in which it revoked Respondent's physician license in the state of Missouri. This order also effectively closed the previously mentioned complaints without any action being taken on them. Exhibit 9.

21. On July 31, 2015, the Board issued an Amended Complaint and Notice of Hearing to Respondent alleging Respondent had engaged in unprofessional conduct pursuant to A.R.S. § 32-1401(27)(d) ("[c]ommitting 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"); A.R.S. § 32-1401(27)(o) ("[a]ction that is 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

---

[3] Following the hearing, Respondent filed an objection to Exhibit 12 because it was not disclosed prior to the hearing. At the hearing, Respondent did not object to the admission of Exhibit 12 and Exhibit 12 was admitted into the record at that time. Respondent's objection is overruled.

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"); A.R.S. § 32-1401(27)(t) ("[k]nowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution"); and A.R.S. § 32-1401(27)(jj) ("[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.")

22. At the hearing in this matter, Respondent testified that when he signed the Application, it was blank and he trusted that the third party, Barton Associates, would complete the Application properly with the information he had provided to them, which contradicted his February 14, 2014 email to Ms. Downey. With respect to the pending complaints in Missouri, Respondent asserted that considered a complaint to be different from an investigation. Respondent stated that because none of the complaints had risen to the level of investigation, he did not provide a false answer to the question on the Application asking if he was "currently under investigation." Respondent also indicated that he interpreted the "healthcare licensing authority" referenced in the other question to not include the Missouri Board, but that it meant a healthcare facility of some sort.

23. Respondent argued that other physicians in Arizona had purchased Botox from the same unlicensed wholesale drug distributor and that they were not facing the revocation of their medical licenses in Arizona. Respondent acknowledged that those physicians had not been convicted of the same felony charge to which he plead guilty. Respondent also stated that he was licensed to practice medicine in Florida and his Florida license had never been disciplined.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent and the subject matter in this case.

2. Pursuant to A.R.S. § 41-1092.07(G)(2) and A.A.C. R2-19-119(B), the Board has the burden of proof in this matter. The standard of proof is by clear and convincing evidence. A.R.S. § 32-1451.04.

3. The evidence of record established that Respondent plead guilty and was convicted of Making a False Statement, a felony, in violation of 18 U.S.C. § 1001(a)(2). Therefore, the Board established that Respondent committed unprofessional conduct as defined by A.R.S. § 32-1401(27)(d) ("[c]ommitting 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").

4. The evidence of record established that Respondent's Missouri license was revoked pursuant to the Disciplinary Order issued by the Missouri Board on November 25, 2014. The evidence of record also established that Respondent's Illinois license was indefinitely suspended pursuant to the Order issued by the Illinois Board on April 23, 2014. Therefore, the Board established that Respondent committed unprofessional conduct as defined by A.R.S. § 32-1401(27)(o) ("[a]ction that is 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").

5. The evidence of record established that Respondent provided false answers on both the Application and the Renewal with respect to any outstanding complaints and investigations. Despite Respondent's statement that his answers were merely an improper interpretation of the questions or that the complaints with the Missouri Board did not rise to the level of an investigation, the answers provided by Respondent were false.

6. "'Knowingly' imports only a knowledge that the facts exist which bring the act or omission within the provisions of the statute using such word. It does not require any knowledge of the unlawfulness of the act or omission."[4] Because Respondent should have known that his answers on the Application and Renewal that he was not under investigation and had no pending complaints against him were false, the Board established that Respondent committed unprofessional conduct as defined by A.R.S. § 32-1401(27)(t) ("[k]nowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution") and A.R.S. § 32-1401(27)(jj) ("[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.")

7. The Arizona legislature created the Board to protect the public. *See* Laws 1992, Ch. 316, § 10. Based on the circumstances in this case, Respondent's conduct has established that he cannot be regulated at this time. Therefore, the Board should revoke Respondent's license to practice allopathic medicine.

ORDER

Based on the foregoing, it is ordered that on the effective date of the Board's final order in this matter, the Board revoke License No. 45505 for the practice of allopathic medicine in Arizona previously issued to Respondent Erick A. Falconer, M.D.

It is further ordered assessing Respondent Erick A. Falconer, M.D. the costs of the formal hearing pursuant to A.R.S. § 32-1451(M).

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

---

[4] A.R.S. § 1-215(17).

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 3rd day of December 2015.

THE ARIZONA MEDICAL BOARD

By Patricia E. McSorley
Patricia E. McSorley
Executive Director

ORIGINAL of the foregoing filed this 3rd day of December, 2015 with:

Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

COPY of the foregoing filed this 3rd day of December, 2015 with:

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

Executed copy of the foregoing mailed by U.S. Mail this 3rd day of December, 2015 to:

Erick A. Falconer, M.D.
Address of Record

Mary D. Williams
Assistant Attorney General
Office of the Attorney General
CIV/LES
1275 W. Washington
Phoenix, AZ 85007

Mary Bailey
4742615