BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **TIN T. WIN, M.D.,** Holder of License No. 28212 for the Practice of Allopathic Medicine In the State of Arizona.	Board Case No. MD-12A-28212-MDX **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** **(License Revocation)**

On April 2, 2013, 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. Tin T. Win, M.D., ("Respondent") did not appear before the Board; Assistant Attorney General Anne Froedge, 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 (Board) is the authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Tin T. Win, M.D. (Respondent) is the holder of License No. 28212 for the practice of allopathic medicine in Arizona since 2000. Respondent practiced neurology.

3. On August 20, 2003, the Board issued a non-disciplinary letter of concern to Dr. Win for her poor documentation of a patient's history and lack of effort to obtain prior medical records in her care of a patient in Case No. MD-02-0502A.

4. On June 4, 2009, the Board's Executive Director accepted Dr. Win's entry into a Consent Agreement to resolve another matter, Case No. MD-08-0581A. In the Consent Agreement, Dr. Win admitted that she committed unprofessional conduct pursuant to A.R.S. § 32-1401(27)(e) ("[f]ailing or refusing to maintain adequate records on a patient")

and A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public") by deviating from the standard of care in her treatment of a patient.

5. According to the terms of the Consent Agreement, Dr. Win was placed on probation for a period of one year and was required to complete 15 to 20 hours of Board Staff pre-approved Category I Continuing Medical Education (CME) in prescribing controlled substances and 15 to 20 hours of CME in medical record-keeping, in addition to the CME hours required for biennial renewal of her license.

6. Dr. Win successfully completed the terms of her probation in Case No. MD-08-0581A.

7. On October 5, 2011, the Board entered Interim Findings of Fact, Conclusions of Law and Order for Summary Restriction of License, which summarily restricted Respondent from prescribing controlled substances.

8. On June 7, 2012, the Board's Executive Director issued Findings of Fact, Conclusions of Law and Order in which it entered a Decree of Censure, Practice Restriction, and Probation. As terms of the Practice Restrictions, Respondent was prohibited from prescribing, administering, or dispensing any controlled substances for a period of three years retroactive to the date of the Interim Summary Practice Restriction.[1] Respondent was also placed on probation for three years or until she had completed one year of consecutive, successful chart reviews. Respondent was required, within 30 days of the effective date of the Order, to enter into a contract with a board-approved monitoring program to provide all monitoring services, including monitoring of the Practice Restriction and chart reviews.

9. Board staff received information that Respondent had prescribed controlled substances in violation of the Practice Restrictions between October 6, 2011, and January 4, 2012.

10. After investigation, Board staff identified the following prescriptions for controlled substances issued by Respondent after October 5, 2011:

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[1] The Order stated the Interim Summary Practice Restriction was entered on May 5, 2011, rather than on October 5, 2011.

Patient MM	Fioricet with Codeine	October 6, 2011
Patient SH	Dilaudid	October 6, 2011
Patient RS	Phenobarbital	October 14, 2011
Patient BW (1)	Testosterone	November 22, 2011
Patient SH	Testosterone	November 29, 2011
Patient CP	Morphine	December 12, 2011
Patient AD	Midrin	December 19, 2011
Patient RS	Lorazepam	December 21, 2011
Patient RS	Phenobarbital	December 22, 2011
Patient GR	Testosterone	January 4, 2012
Patient BW (1)	Testosterone	April 23, 2012
Patient BW (1)	Testosterone	May 22, 2012
Patient BW (2)	Testosterone	June 4, 2012
Patient DB	Carisoprodol	June 2012
Patient SH	Testosterone	July 31, 2012
Patient GR	Testosterone	August 22, 2012

11. Respondent issued patient DB prescriptions for MS Contin, Roxicodone and Norco dated September 6, 2011, and predated prescriptions for the same drugs to be filled in October 2011.

12. Respondent issued patient SH prescriptions for Dilaudid, Methadone, and Adderall dated September 12, 2011, and predated prescriptions for the same drugs to be filled in October 2011 and November 2011.

13. Respondent issued patient KD a prescription for Percocet dated September 12, 2011, and predated prescriptions for the same drug to be filled in October 2011 and November 2011.

14. On October 2, 2012, Board staff questioned Respondent under oath. Respondent indicated she had not written prescriptions for any controlled substances other than Testosterone.

15. On October 25, 2012, the Board held an emergency meeting at which it found that the public health, safety, or welfare imperatively required emergency action and summarily suspended Respondent's medical license pursuant to A.R.S. § 32-1451(D).

16. On November 9, 2012, the Board issued a Complaint and Notice of Hearing to Respondent alleging Respondent had engaged in unprofessional conduct pursuant to A.R.S. § 32-1401(27)(k) ("[s]igning a blank, undated or predated prescription form"); A.R.S. § 32-1401(27)(r) ("[v]iolating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under the provisions of this chapter"); and A.R.S. § 32-1401(27)(jj) ("[k]knowingly 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"). The Complaint and Notice of Hearing was sent via certified mail to Respondent at her address of record.

17. A hearing was held at the Office of Administrative Hearings on December 14, 2012. Respondent did not request to appear telephonically at the duly noticed hearing and did not request that the hearing be continued. Although the start of the hearing was delayed 35 minutes to allow Respondent additional travel time, she did not appear, personally or through an attorney, and did not contact the OAH to request that the start of the hearing be further delayed. Consequently, Respondent did not present any evidence to defend her license.

18. As of the date of the hearing, Respondent had not entered into a contract with a board-approved monitoring program to provide all monitoring services including monitoring of the Practice Restrictions and chart reviews as ordered in the June 7, 2012, Findings of Fact, Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Complaint and Notice of Hearing that the Board mailed to Respondent at her address of record was reasonable, and Respondent is deemed to have received notice of the hearing. *See* A.R.S. § 41-1092.04; A.R.S. § 41-1061(A).

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

3. 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.

4. The evidence established Respondent issued predated prescription forms to patients DB, SH, and KD. Therefore, the Board established that Respondent committed unprofessional conduct as defined by A.R.S. § 32-1401(27)(k) ("[s]igning a blank, undated or predated prescription form").

5. The evidence established Respondent prescribed controlled substances after the October 5, 2011, Interim Findings of Fact, Conclusions of Law and Order for Summary Restriction of License, which summarily restricted Respondent from prescribing controlled substances. The evidence also established Respondent had failed to enter into a contract with a board-approved monitoring program as ordered in the June 7, 2012, Findings of Fact, Conclusions of Law and Order. Therefore, the Board established that Respondent committed unprofessional conduct as defined by A.R.S. § 32-1401(27)(r) ("[v]iolating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under the provisions of this chapter").

6. On October 2, 2012, Respondent informed the Board she had not prescribed any controlled substances other than Testosterone since the October 5, 2011, Interim Findings of Fact, Conclusions of Law and Order for Summary Restriction of License. Because Respondent should have known that her statement to the Board was false, the Board established that Respondent committed unprofessional conduct as defined by 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 legislature created the Board to protect the public. *See* Laws 1992, Ch. 316, § 10. Respondent's repeated failures to conform her practice to statutory requirements or to comply with the Practice Restriction in her prescription of controlled substances indicate that she cannot be regulated at this time. Therefore, the Board should revoke Respondent's license to practice allopathic medicine.

RECOMMENDED ORDER

Based on the foregoing, it is recommended that on the effective date of the Board's final order in this matter, the Board revoke License No. 28212 for the practice of allopathic medicine in Arizona previously issued to Respondent Tin T. Win, M.D.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that she 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 3rd day of April, 2013.

THE ARIZONA MEDICAL BOARD

By _____
LISA WYNN
Executive Director

ORIGINAL of the foregoing filed this 3rd day of April, 2013 with:

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

COPY of the foregoing filed this 3rd day of April, 2013 with:

Cliff J. Vanell, Director
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Executed copy of the foregoing mailed by U.S. Mail this 3rd day of April, 2013 to:

Tin T. Win, M.D.
Address of Record

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