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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.

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

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

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

22 **I ATTEST THAT ALL INFORMATION SUBMITTED ON AND WITH THIS**
23 **APPLICATION IS TRUE.** I am the person herein named subscribing to this
24 application; I have read the statutes and rules regarding licensure and have
25 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

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

3 Exhibit 3.

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

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

13 Exhibit 4.

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

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

23 12. Respondent's attorney notified the Arizona Board that, on November 6, 2013,
24 Respondent entered a guilty plea in the U.S. District Court, Eastern District of Missouri,
25 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

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

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

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

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

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

22 17. At some point during its investigation, the Arizona Board included a new allegation
23 that Respondent failed to disclose the pending investigations in Missouri on the
24 Application and Renewal to the Arizona Board. On or about February 14, 2014, after
25 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.

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

11 Exhibit 12.³

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

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

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

20 21. On July 31, 2015, the Board issued an Amended Complaint and Notice of Hearing
21 to Respondent alleging Respondent had engaged in unprofessional conduct pursuant to
22 A.R.S. § 32-1401(27)(d) ("[c]ommitting a felony, whether or not involving moral turpitude,
23 or a misdemeanor involving moral turpitude. In either case, conviction by any court of
24 competent jurisdiction or a plea of no contest is conclusive evidence of the commission");
25 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.

1 indirectly to an act of unprofessional conduct prescribed by this paragraph. The action
2 taken may include refusing, denying, revoking or suspending a license by that jurisdiction
3 or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or
4 monitoring a licensee by that jurisdiction or placing a licensee on probation by that
5 jurisdiction"); A.R.S. § 32-1401(27)(t) ("[k]nowingly making any false or fraudulent
6 statement, written or oral, in connection with the practice of medicine or if applying for
7 privileges or renewing an application for privileges at a health care institution"); and
8 A.R.S. § 32-1401(27)(jj) ("[k]nowingly making a false or misleading statement to the
9 board or on a form required by the board or in a written correspondence, including
10 attachments, with the board.")

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

21 23. Respondent argued that other physicians in Arizona had purchased Botox from
22 the same unlicensed wholesale drug distributor and that they were not facing the
23 revocation of their medical licenses in Arizona. Respondent acknowledged that those
24 physicians had not been convicted of the same felony charge to which he plead guilty.
25 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.

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

4 3. The evidence of record established that Respondent plead guilty and was
5 convicted of Making a False Statement, a felony, in violation of 18 U.S.C. § 1001(a)(2).
6 Therefore, the Board established that Respondent committed unprofessional conduct as
7 defined by A.R.S. § 32-1401(27)(d) (“[c]ommitting a felony, whether or not involving moral
8 turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any
9 court of competent jurisdiction or a plea of no contest is conclusive evidence of the
10 commission”).

11 4. The evidence of record established that Respondent’s Missouri license was
12 revoked pursuant to the Disciplinary Order issued by the Missouri Board on November
13 25, 2014. The evidence of record also established that Respondent’s Illinois license was
14 indefinitely suspended pursuant to the Order issued by the Illinois Board on April 23,
15 2014. Therefore, the Board established that Respondent committed unprofessional
16 conduct as defined by A.R.S. § 32-1401(27)(o) (“[a]ction that is taken against a doctor of
17 medicine by another licensing or regulatory jurisdiction due to that doctor’s mental or
18 physical inability to engage safely in the practice of medicine or the doctor’s medical
19 incompetence or for unprofessional conduct as defined by that jurisdiction and that
20 corresponds directly or indirectly to an act of unprofessional conduct prescribed by this
21 paragraph. The action taken may include refusing, denying, revoking or suspending a
22 license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise
23 limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on
24 probation by that jurisdiction”).

25 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.

1 6. "Knowingly' imports only a knowledge that the facts exist which bring the act or
2 omission within the provisions of the statute using such word. It does not require any
3 knowledge of the unlawfulness of the act or omission."⁴ Because Respondent should
4 have known that his answers on the Application and Renewal that he was not under
5 investigation and had no pending complaints against him were false, the Board
6 established that Respondent committed unprofessional conduct as defined by A.R.S. §
7 32-1401(27)(t) ("[k]nowingly making any false or fraudulent statement, written or oral, in
8 connection with the practice of medicine or if applying for privileges or renewing an
9 application for privileges at a health care institution") and A.R.S. § 32-1401(27)(jj)
10 ("[k]nowingly making a false or misleading statement to the board or on a form required
11 by the board or in a written correspondence, including attachments, with the board.")
12 7. The Arizona legislature created the Board to protect the public. See Laws 1992,
13 Ch. 316, § 10. Based on the circumstances in this case, Respondent's conduct has
14 established that he cannot be regulated at this time. Therefore, the Board should revoke
15 Respondent's license to practice allopathic medicine.

16 **ORDER**

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

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

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

23 Respondent is hereby notified that he has the right to petition for a rehearing or
24 review. The petition for rehearing or review must be filed with the Board's Executive
25

⁴ A.R.S. § 1-215(17).

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

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

8 DATED this 3rd day of December 2015.

9 THE ARIZONA MEDICAL BOARD

10
11
12 By Patricia E. McSorley
13 Patricia E. McSorley
14 Executive Director

15
16 ORIGINAL of the foregoing filed this
17 3rd day of December, 2015 with:

18 Arizona Medical Board
19 9545 East Doubletree Ranch Road
20 Scottsdale, Arizona 85258

21 COPY of the foregoing filed this
22 3rd day of December, 2015 with:

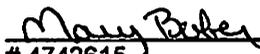
23 Greg Hanchett, Director
24 Office of Administrative Hearings
25 1400 W. Washington, Ste 101
Phoenix, AZ 85007

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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


4742615

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

Case No.14A-45505-MDX-RHG

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

**ORDER DENYING PETITION FOR
REHEARING OR REVIEW**

4 Holder of License No. 45505
5 For the Practice of Allopathic Medicine
6 In the State of Arizona

7 At its public meeting on February 4, 2016, the Arizona Medical Board ("Board")
8 considered Erick A. Falconer, M.D.'s ("Respondent") Petition for Rehearing or Review of
9 the Board's Order dated December 3, 2015 in the above referenced matter. After
10 considering all of the evidence, the Board voted to deny Respondent's Request for
11 Rehearing or Review.

12 **ORDER**

13 **IT IS HEREBY ORDERED:**

14 Respondent's Petition for Rehearing or Review is denied. The Board's December
15 3, 2015 Findings of Fact, Conclusions of Law and Order for revocation of Respondent's
16 license in Case No. 14A-45505-MDX-RHG is effective and constitutes the Board's final
17 administrative order.

18 **RIGHT TO APPEAL TO SUPERIOR COURT**

19 Respondent is hereby notified that he has exhausted his administrative remedies.
20 Respondent is advised that an appeal to Superior Court in Maricopa County may be taken
21 from this decision pursuant to title 12, chapter 7, article 6 of Arizona Revised Statutes.

22 DATED AND EFFECTIVE this 9th day of February, 2016.

23 ARIZONA MEDICAL BOARD

24 By Patricia E. McSorley
25 Patricia E. McSorley
Executive Director

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EXECUTED COPY of the foregoing mailed
this 9th day of February, 2016 to:

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

ORIGINAL of the foregoing filed
this 9th day of February, 2016 with:

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

Mary Baker
Board Staff