

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 IN THE MATTER OF :

No. 11A-41114-MDX

3 **EMILIO LUNA, M.D.,**

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR
REVOCATION**

4 Holder of License No. 41114
For the Practice of Allopathic Medicine
5 In the State of Arizona

6 Respondent

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8 On October 5, 2011, this matter came before the Arizona Medical Board
9 ("Board") for oral argument and consideration of the Administrative Law Judge ("ALJ")
10 Brian B. Tully's Findings of Fact and Conclusions of Law and Recommended Order.
11 Dr. Emilio Luna ("Respondent") was not present. Assistant Attorney General Anne
12 Froedge represented the State. Christopher Munns, Assistant Attorney General with
13 the Solicitor General's Section of the Attorney General's Office, was available to provide
14 independent legal advice to the Board.

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

17 **FINDINGS OF FACT**

- 18 1. The Arizona Medical Board ("Board") is the authority for licensing and regulating
19 the practice of allopathic medicine in the State of Arizona.
- 20 2. Emilio Luna, M.D. ("Respondent") is the holder of License No. 41114 for the
21 practice of allopathic medicine in the State of Arizona.
- 22 3. On September 1, 2010, Respondent was arrested and charged with Distributing
23 Child Pornography in interstate commerce.
- 24 4. On September 2, 2010, the Board initiated Case No. MD-10-1170A after
25 receiving information about Respondent's arrest.
- 26 5. On September 2, 2010, U.S. Magistrate Judge David K. Duncan issued a
27 Criminal Complaint against Respondent based upon a Statement of Probable

1 Cause by affiant Jimmie John Daniels, Special Agent for the Federal Bureau of
2 Investigations. Judge Duncan "found probable cause to believe that Emilio
3 committed the offense of Distribution of Child Pornography as alleged in the
4 complaint."

5 6. On September 3, 2010, Respondent attended a Detention Hearing before Judge
6 Duncan. At that hearing, the Court issued an Order Setting Conditions of
7 Release. Those conditions of release included home detention and electronic
8 monitoring.

9 7. On September 3, 2010, the Board, through its Deputy Executive Director, issued
10 its "Interim Order for Practice Restriction and Consent to Same" in Case No. MD-
11 10-1170A that prohibited Respondent from practicing allopathic medicine until
12 Respondent applies to the Board and receives permission to resume practicing
13 medicine. Respondent executed the Consent to Entry of Interim Order on
14 September 3, 2010.

15 8. On September 8, 2010, the federal Grand Jury issued an Indictment charging
16 Respondent with five counts of violating the provisions of Title 18, United States
17 Code, Sections 2252A(a)(3)(B) and 2256. The Indictment also contains a
18 Forfeiture Allegation pursuant to 18 U.S.C. § 2253.

19 9. On or about September 12, 2010, Respondent removed his electronic monitoring
20 unit and absconded. Respondent was missing after being allowed to attend
21 church services. Respondent's vehicle was found later that day by police with
22 bolt cutters and the monitoring device inside the car.

23 10. On or about March 22, 2011, the Board's assigned investigator, Anita Shepard,
24 ordered that Respondent attend an investigational interview at the Board's
25 offices on March 29, 2011. Respondent failed to appear at the investigational
26 interview.

- 1 11. On July 6, 2011, the Board, through its Executive Director, issued a Complaint
2 and Notice of Hearing ("Complaint") designated as No. 11A-41114-MDX. The
3 Complaint set forth Factual Allegations and Allegations of Unprofessional
4 Conduct against Respondent.
- 5 12. The Complaint also contained a Notice of Hearing that advised Respondent of
6 the time, date, and location of the evidentiary hearing before the Office of
7 Administrative Hearings, an independent agency. The Complaint was sent to
8 Respondent at his address of record with the Board.
- 9 13. The commencement of the scheduled hearing was delayed 15 minutes to allow
10 for the late arrival of Respondent and/or an attorney authorized to represent him.
11 After the delay, the Administrative Law Judge conducted the hearing in
12 Respondent's absence.
- 13 14. The evidence of record supports the Factual Allegations set forth in the
14 Complaint and the above-provided Findings of Fact.

15 **CONCLUSIONS OF LAW**

- 16 1. The Board has jurisdiction over Respondent and the subject matter in this case.
- 17 2. Pursuant to A.R.S. § 41-1092.07(G) (2) and A.A.C. R2-19-119(B), the Board has
18 the burden of proof in this matter. The standard of proof is by a preponderance
19 of the evidence. A.A.C. R2-19-119(A).
- 20 3. The evidence of record established by a preponderance of the evidence that the
21 conduct and circumstances described in the above-provided Findings of Fact
22 constitute unprofessional conduct by Respondent pursuant to A.R.S. § 32-
23 1401(27) (d).
- 24 4. The evidence of record established by a preponderance of the evidence that the
25 conduct and circumstances described in the above-provided Findings of Fact
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constitute unprofessional conduct by Respondent pursuant to A.R.S. § 32-1401(27) (r).

RECOMMENDED ORDER

Respondent's License No. 41114 shall be revoked on the effective date of this Order.

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.

Done this day, October 27, 2011.

THE ARIZONA MEDICAL BOARD



By *L. S. Wynn*
LISA S. WYNN
Executive Director

1 ORIGINAL of the foregoing filed
2 this 17th day of October, 2011 with:

3 Arizona Medical Board
4 9545 E. Doubletree Ranch Road
5 Scottsdale, AZ 85258

6 COPY of the foregoing mailed
7 this 17th day of October, 2011 to:

8 Emilio Luna, M.D.
9 Address of Record

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18 Arizona Medical Board Staff

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