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BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

MARVIN L. GIBBS, M.D.,

Holder of License No. 13736
For the Practice of Allopathic Medicine in the
State of Arizona

Docket No. **07A-070247-MDX**

Case No. MD-07-0247A

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR
REVOCAION OF LICENSE.**

On August 8, 2007 this matter came before the Arizona Medical Board ("Board") for oral argument and consideration of the Administrative Law Judge ("ALJ") Brian Brendan Tully's proposed Findings of Fact and Conclusions of Law and Recommended Order involving Marvin L. Gibbs, M.D. ("Respondent"). Respondent was notified of the Board's intent to consider this matter at the Board's public meeting. Respondent did appear and was represented by counsel, Daniel P. Jantsch. The State was represented by Assistant Attorney General Anne Froedge. Christine Cassetta, Assistant Attorney General with the Solicitor General's Section of the Attorney General's Office provided legal advice to the Board.

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

FINDINGS OF FACT

1. The Arizona Medical Board ("Board") is the authority for licensing and regulating the practice of allopathic medicine in the State of Arizona.
2. Respondent is the holder of License No. 13736 for the practice of allopathic medicine in Arizona.
3. Respondent practiced in obstetrics and gynecology in Arizona from 1983 to approximately 2004. In August 2004 he opened the clinic named Universal Health and Wellness, where he treated patients with male sexual dysfunction. He was the sole owner of that practice.

1 4. Respondent's medical license was required to be renewed in August 2006.
2 Respondent did not renew the license within the four month grace period. Respondent's license
3 did not expire in December 2006, but instead was suspended by operation of law due to active
4 investigations by the Board. A.R.S. § 32-3202.

5 5. On or about August 25, 2006 the Board summarily suspended Respondent's
6 medical license in Case No. MD-06-0207A. A formal hearing was conducted in that case before
7 the Office of Administrative Hearings, an independent agency. At its February 2007 meeting, the
8 Board adopted the Administrative Law Judge's recommended Order in that case and lifted
9 Respondent's license suspension for "time served" and placed Respondent on probation for one
10 year to monitor his medical records keeping.

11 6. On April 19, 2007 the Board considered another summary action against
12 Respondent in Case No. MD-07-0247A and entered an Interim Findings of Fact, Conclusions of
13 Law and Order of Summary Suspension of License.

14 7. Respondent's treatment for males with sexual dysfunction varied from oral
15 agents called phosphodiesterase inhibitors, such as Viagra, Cialis and Levitra, to injectable
16 medications called Trimix.

17 8. Trimix consisted of the following three different medications in a solution:
18 Phentolamine, Papeverine and Prostaglandins.

19 9. Trimix injectable therapy requires that the medicated syringes by kept cool by
20 refrigeration.

21 10. After obtaining his dispensing certificate in January 2006 Respondent's standard
22 practice was to perform a physical examination of a patient, then write a prescription and send it to
23 a neighboring pharmacy named the Compounding Center. The pharmacy then returned the
24 medication in vials to Respondent's clinic. Respondent's clinic would purchase the medication at a
25 wholesale price, load the medication from the vials into syringes at the prescribed dosage levels,

1 and then sell the loaded syringes to the patient at a marked up price. Prior to Respondent
2 obtaining a dispensing certificate, the pharmacy loaded the medication into the syringes and
3 returned the loaded syringes to the clinic.

4 11. After being summarily suspended in August 2006 Respondent continued to
5 operate his clinic. Respondent testified he would open the clinic in the morning and close it in the
6 evening after doing accounting and taking money to the bank. He denies practicing medicine.

7 12. Michael Berke, N.P. a naturopathic physician, worked for Respondent from
8 September 6, 2006 to October 3, 2006. Dr. Berke saw approximately 80 to 90 patients over 14
9 days. Respondent had reasonable knowledge that Dr. Berke was no longer providing services to
10 his clinic after October 3, 2006.

11 13. Dr. Berke wrote prescriptions and dispensed medications while working at
12 Respondent's clinic. Dr. Berke did not, and does not, have a dispensing certificate. Dr. Berke
13 testified he assumed Respondent's dispensing certificate was still in effect, which it was not.

14 14. Respondent profited by Dr. Berke seeing patients, writing prescriptions and
15 dispensing medications to patients at his clinic while he was summarily suspended.

16 15. Respondent loaded syringes for patient J.E. while Dr. Berke was working for him.

17 16. There is no evidence that a medical license is required for loading prescription
18 medications from a vial into syringes.

19 17. Dr. Berke testified he left several signed, but blank prescriptions at Respondent's
20 clinic.

21 18. On or about October 27, 2006 a pharmacy log reflects a prescription issued by
22 Dr. Berke for a compound Trimix naming Respondent as the patient. Dr. Berke testified he had no
23 knowledge of that prescription. Dr. Berke testified similarly to prescriptions dated November 1,
24 2006 and November 3, 2006, when he no longer was working at Respondent's clinic. While
25

1 Respondent testified that Dr. Berke was on call for his clinic, Dr. Berke credibly testified he was no
2 longer working at the clinic after on or about October 3, 2006.

3 19. Dr. Berke candidly testified he was dispensing medications to patients while
4 working at Respondent's clinic. Respondent had knowledge that such dispensing was occurring.

5 20. On or about November 1, 2006 Respondent hired Juan Rojas to answer the
6 clinic's telephone, schedule appointments for patients, and market his clinic's services via the
7 telephone to patients.

8 21. On or about November 3, 2006 Respondent was listed as the prescribing
9 physician for quantity 10 compound ST1. ST1 is a prescribed medication. Respondent testified he
10 could obtain the prescribed medication because it was allegedly for in-house diagnostic use.

11 22. On or about November 30, 2006 Gregory Muhammad, M.D. started working for
12 Respondent. Dr. Muhammad saw approximately eight patients and wrote 12 prescriptions during
13 his brief tenure working for Respondent.

14 23. J.E. was a patient of Respondent who first presented to his clinic in 2006. J.E.
15 had heard about Respondent's services by a radio advertisement.

16 24. J.E. had a stroke on February 17, 2005.

17 25. Respondent wrote a prescription for injectable medications for J.E. in July 2006.
18 However, J.E. had not purchased the entire prescription medication.

19 26. Respondent closed his clinic in January 2007, but still stayed in business.

20 27. In March 2007, Respondent's employee called J.E. about the latter's obtaining
21 additional prescription injectable medications under the July 2006 prescription. J.E. agreed to
22 purchase the medications. J.E. and Respondent's employee met in the parking lot of a Walgreen's
23 drug store, where J.E. paid for the prescription medications and Respondent's employee gave him
24 the prescribed injectable medications.

1 Copy of the foregoing filed this
Jan day of August, 2007, with:

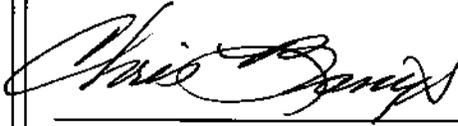
2 Cliff J. Vanell, Director
3 Office of Administrative Hearings
4 1400 W. Washington, Ste. 101
Phoenix, AZ 85007

5 Executed copy of the foregoing mailed
6 by US Mail this Jan day of August,
2007, to:

7 Daniel P. Jantsch
8 Olson, Jantsch & Bakker
7243 N. 16th St.
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9 Marvin L. Gibbs, M.D.
10 (Address of record)

11 Dean Brekke
12 Assistant Attorney General
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15 _____