

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **MICHAEL HERION, M.D.**

4 Holder of License No. **30486**
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Board Case No. MD-05-1033A

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

(Letter of Reprimand)

7 The Arizona Medical Board ("Board") considered this matter at its public meeting on April
8 5, 2006. Michael Herion, M.D., ("Respondent") appeared before the Board with legal counsel
9 Gordon Bueler for a formal interview pursuant to the authority vested in the Board by A.R.S. § 32-
10 1451(H). The Board voted to issue the following Findings of Fact, Conclusions of Law and Order
11 after due consideration of the facts and law applicable to this matter.

12 **FINDINGS OF FACT**

13 1. The Board is the duly constituted authority for the regulation and control of the
14 practice of allopathic medicine in the State of Arizona.

15 2. Respondent is the holder of License No. 30486 for the practice of allopathic
16 medicine in the State of Arizona.

17 3. The Board initiated case number MD-05-1033A after receiving a complaint alleging
18 Respondent was prescribing over the internet without performing physical examinations or having
19 previously established a doctor-patient relationship. Respondent only reviewed an on-line
20 questionnaire completed by the person requesting the medication. Respondent retained the
21 questionnaires and produced them for the Board's investigation. None of the questionnaires
22 document any physical examination. Respondent prescribed over the internet to 115 Arizona
23 residents in 2005 and earned more than \$85,000.00 from this practice. Respondent resigned
24 from the internet company when he learned his conduct was inappropriate.
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1 4. The Board asked Respondent to describe how he established a doctor-patient
2 relationship with the persons who were directed to him on-line through the two websites involved.
3 Respondent testified he would receive on-line consultations filled out for patients who required
4 medications at low cost or did not have insurance. Respondent would review what the patient
5 needed in regard to medications, review the medication consult form, including a basic
6 background on the patient. The background included whether they had been on the medication
7 before, whether their primary care physician was aware of the medication, any problems with the
8 medication, allergies, family history, other medications they are taking, any supplements, etc.
9 Respondent testified he would either approve or disapprove the medication after reviewing this
10 document. The Board asked Respondent how he authenticated the information from the
11 questionnaire. Respondent testified there was no way to authenticate it. The Board asked if
12 Respondent asked for or received records from previous treating physicians to assess what
13 medication and treatment the patients may have had in the past. Respondent testified he did not.

14 5. Respondent testified one of the reasons he came into this practice was that he
15 received a phone call from one of the web-sites a number of years ago requesting he confirm
16 how prescriptions should be filled for one of his patients requesting a medication. Respondent
17 noted when he questioned the web-site further, they indicated it was common practice and, after
18 the consult was approved, they would contact the primary care physician and make sure
19 everything was okay. The Board asked how Respondent followed-up with the patients after he
20 prescribed the medications. Respondent testified there was no follow-up. The Board asked if
21 Respondent was comfortable prescribing anti-depressant medications to patients without any
22 follow-up. Respondent testified he had apprehensions about that and could speak from
23 experience because he had significant personal experience with a family member who suffers
24 from a mental disorder. Respondent noted the family member cannot get insurance and
25 medications are very, very expensive. Respondent testified he appreciated the availability of low-

1 cost medications, but he did have reservations about that and did address them with the
2 pharmacist and the attorney from the company before he started internet prescribing.

3 6. The Board noted Respondent's mention of the prescriptions being low-cost for
4 those he thought could not otherwise afford prescriptions. Respondent was asked if he did any
5 financial review of the patients prior to sending them a questionnaire. Respondent testified he did
6 not and that, when he was approached by the company, they indicated one of their goals was to
7 provide low-cost medications for people without insurance. Respondent testified he was told to
8 check the website and compare the prices. Respondent testified he did and there were
9 significant savings. The Board noted when Respondent was interviewed by Board Staff he
10 mentioned speaking with the internet company's attorney and pharmacist. The Board asked if
11 Respondent ever confirmed whether either person was licensed to practice in Arizona.
12 Respondent testified he had not.

13 7. The Board asked Respondent how his financial compensation was calculated.
14 Respondent testified he would receive anywhere from \$2.00 to \$6.00 for each consult. The
15 Board noted Respondent was only paid if he approved the medication and asked if that struck
16 him as rather odd and put him in a conflict of interest. Respondent testified it did and he voiced
17 that concern. Respondent testified in no way, and he would be happy to go through his records,
18 did he think it bothered his judgment. Respondent testified each prescription earned a small
19 amount, but noted it did add up over time. Respondent testified this did not influence any of his
20 judgment whatsoever.

21 8. The Board asked if Respondent was aware of the potential for abuse with this type
22 of prescribing. Respondent testified he was, but there was not an abuse issue and this was one
23 of the issues he addressed with the pharmacist and asked her to make sure this is not going to
24 happen. Respondent testified the pharmacist indicated there were IP address shields, signature
25

1 shields, a number of safety measures in place to make sure people were not ordering medication
2 before they needed it.

3 9. The Board asked if there was anything to stop a patient from ordering from
4 multiple internet pharmacies. Respondent testified he asked that question and the pharmacist
5 told him to the best of her knowledge the company was one of the biggest and consulted with
6 other pharmacies. Respondent testified it was his understanding that there may have been only
7 one or two pharmacies and, because they tracked the customer's IP address, they would know if
8 the individual was ordering fraudulently. Respondent testified he was an ophthalmologist by
9 training. The Board asked how Respondent felt qualified to treat chronic pain and depression.
10 Respondent testified he did not feel qualified, but he was just a cog so the individuals could get
11 their medications and continue their treatment with their primary care physician. Respondent
12 testified he would not prescribe anti-psychotics or anti-anxiety medications to someone referred
13 to him for that medication without a primary doctor that was following that condition. The Board
14 asked how Respondent could be sure they were even seeing a primary care physician.
15 Respondent testified he was taking the word of the pharmaceutical company in addition to
16 substantiating that with the phone call he mentioned earlier that he received for an allergy drop to
17 the eye that they were checking on to make sure it was prescribed properly and he did not have
18 any objections to it.

19 10. The Board asked Respondent what he would do if a patient were to walk into his
20 office and wanted him to write prescriptions for the various medications he prescribed over the
21 internet, but Respondent had no records and did not know the patient. Respondent testified he
22 would not write the prescription. The Board asked why then would Respondent do it over the
23 internet. Respondent testified he did so because he was given some record and was given
24 reassurance that the person had a primary care physician in the majority of cases and this
25 primary care physician would be contacted. Respondent testified it was not the best forum to

1 achieve this, but he thought it was a legitimate way for people to receive medication. Respondent
2 testified he looked at himself as a means to an end for these individuals who needed to save
3 money, but under no circumstances did he consider he was managing these patients on-line.

4 11. The Board noted Respondent was a highly trained physician and asked what
5 made him get involved in internet prescribing. Respondent testified he received a curious phone
6 call from someone calling to substantiate a Patanol prescription. Respondent told them Patanol
7 was the correct medication and asked why he was being called. Respondent testified he was told
8 the patient required the medication and it would cost less if he got it through the internet
9 pharmacy. Respondent testified he spoke with them for a little bit and they asked if he would be
10 interested in coming on board. Respondent testified he asked for information. As background
11 information, Respondent informed the Board he was a foreign medical school graduate and,
12 because of that, he was not allowed to moonlight during his training in Mississippi. Respondent
13 thought this prescribing may be a way for him to moonlight since, unlike his colleagues, he could
14 not spend eight hours in the emergency room to supplement his income. Respondent testified
15 this was one of the reasons he saw this as a moonlighting opportunity and because he could
16 appreciate the issues at hand with medications being very, very expensive.

17 12. The Board asked Respondent if it occurred to him that anyone could just sign on to
18 the internet and ask for a doctor to give them anything they felt they might want to have. The
19 Board noted a lot of people probably want medications. Respondent testified he had these
20 concerns and after speaking with the company's attorney and pharmacist at length and giving
21 them his apprehension and concerns, they put him at ease with all the safety guidelines, the
22 technological safety measures they had in place to ensure this could not be abused. The Board
23 asked if it ever occurred to him to call the Board or the pharmacy in the state. Respondent
24 testified the company used the right vernacular – they had all the HIPAA regulations, how long he
25 had to hold onto records, and he was very convinced. Respondent testified the Board's records

1 reflect he called the Board before the Board ever contacted him. Respondent said when he
2 called the Board he expected, based on all the information the company had given him, to be told
3 the Board approved of this practice. Respondent noted however, Board Staff told him it was not
4 approved and he may want to get an attorney. Respondent testified this information took the
5 wind out from underneath him. The Board asked if Respondent stopped prescribing at that point.
6 Respondent testified he had stopped before the call to the Board when he received a phone call
7 from a man who identified himself as working with a task force to abolish the practice of internet
8 prescribing. Respondent testified after speaking to this gentleman he immediately called the
9 company and left an angry message asking what was going on. Respondent noted he sent a
10 letter of resignation before the Board even contacted him.

11 13. Respondent testified it was very hard for him to sit before the Board and he
12 considers himself a good, honest and moral physician. Respondent testified that as a military
13 officer he has core values, the first of which is integrity and just by virtue of him sitting before the
14 Board he does not think he lived up to that. Respondent testified it has been a heavy burden on
15 his shoulders since he spoke to the gentleman who told him the practice was illegal and he will
16 cooperate with the Board in any way it sees fit. Respondent testified this would never happen
17 again.

18 14. The Board asked Respondent if he had any contact with the internet company
19 after he left the phone message. Respondent testified they never responded to his phone
20 message or an e-mail he sent. However, when he came for his interview with Board Staff he
21 attempted to log-on to show Board Staff the system and his account had been inactivated.
22 Respondent noted he believed the account was inactivated probably within days of his phone
23 call. Respondent testified he received a phone call about two weeks later from an individual
24 asking him how things were going and he did not recognize the caller as anyone he had
25 previously spoken to. Respondent testified he told the caller they had better watch out and they

1 were going to get into trouble. Respondent testified he then went on-line and called Board Staff
2 with information that substantiated the points he made – for instance, that they told him he did not
3 need to do a history and physical – and that was clearly documented on the website.
4 Respondent testified he is aware that he is required to do a physical examination, to have a
5 physician-patient relationship, before prescribing.

6 15. Respondent is required to maintain an adequate medical record. An adequate
7 medical record is a legible medical record containing, at a minimum, sufficient information to
8 identify the patient, support the diagnosis, justify the treatment, accurately document the results,
9 indicate advice and cautionary warnings provided to the patient and provide sufficient information
10 for another practitioner to assume continuity of the patient's care at any point in the course of
11 treatment. The records maintained by Respondent consist solely of the internet questionnaire
12 filled out by the patient and do not contain the required information.

13 16. The standard of care required Respondent to obtain a reliable medical history and
14 perform a physical examination to adequately establish the diagnosis for which a medication is
15 prescribed.

16 17. Respondent deviated from the standard of care when he prescribed medications
17 without obtaining a medical history and without performing a physical examination to adequately
18 establish a diagnosis.

19 18. Persons who received the medications were subject to the potential harm of taking
20 medications not warranted for their conditions and not having follow-up to monitor their health.

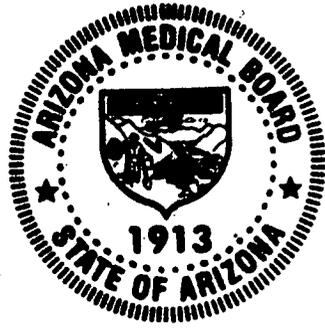
21 19. The Board noted Respondent had been very cooperative with the investigation
22 and had been very forthright.

23 CONCLUSIONS OF LAW

24 1. The Arizona Medical Board possesses jurisdiction over the subject matter hereof
25 and over Respondent.

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

3 DATED this 9th day of June, 2006.



4 THE ARIZONA MEDICAL BOARD

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6
7 By *Timothy C. Miller*
8 TIMOTHY C. MILLER, J.D.
Executive Director

9 ORIGINAL of the foregoing filed this
10 9th day of June, 2006 with:

11 Arizona Medical Board
12 9545 East Doubletree Ranch Road
13 Scottsdale, Arizona 85258

14 Executed copy of the foregoing
15 mailed by U.S. Mail this
16 9th day of June, 2006, to:

17 Gordon Bueler
18 Bueler Jones LLP
19 1300 North McClintock Drive – Suite B4
20 Chandler, Arizona 85226-7241

21 Michael Herion, M.D.
22 Address of Record

23
24 *Liz M. Herion*
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