BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **MARVIN GIBBS, M.D.** Holder of License No. **13736** For the Practice of Medicine In the State of Arizona.	Board Case No. MD-01-0861 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** (Decree of Censure, Probation & Civil Penalty)

The Arizona Medical Board ("Board") considered this matter at its public meeting on February 12, 2003. Marvin Gibbs, M.D., ("Respondent") appeared before the Board with legal counsel, Dan Jantsch, for a formal interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(H). After due consideration of the facts and law applicable to this matter, the Board voted to issue the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of 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 the State of Arizona.

3. The Board initiated case number MD-01-0861 after receiving information from the Drug Enforcement Agency ("DEA") that Respondent prescribed controlled substance medications and prescription-only medications to individuals via internet web sites. The Board subpoenaed pharmacy records and determined that, over approximately 10 months, Respondent had issued and/or authorized prescriptions and refills over 9,000 times for a total of over 700,000 dosage units ultimately dispensed to approximately 2,600 patients.

4. An investigational interview with Respondent revealed the following:

a. Owners of an auto body parts business in Mesa approached Respondent in May or June of 2000 and asked him to participate in the practice of medicine via the internet. Initially Respondent prescribed medications from "MYPRIVATEDOC.com" and was paid $20.00 for each internet consultation. Visitors to the web site filled out a questionnaire regarding their medical history and their medical complaint. Respondent received the forms via the internet and also received a schedule of when the patients would be calling for an evaluation. Respondent initially evaluated 10 to 15 patients per day, spending approximately 5 to 10 minutes with each patient. By December 2000 the internet consultations increased to approximately 30 per day.

b. Respondent made no effort to validate the information provided to him via the internet. Also, MYPRIVATEDOC.com requested verification of patient identity through picture identification, but Respondent did not independently verify patient identity. Respondent had not taken any courses or continuing medical education in chronic pain management or the identification of drug seeking behavior. Respondent did not perform any physical examinations of the patients nor did he request or obtain medical records from other treating physicians. Respondent did not believe he had established a doctor-patient relationship with any of the internet patients. The majority of prescriptions issuec by the Respondent were for a thirty-day supply of controlled substance medications, with a maximum of two refills.

c. Respondent terminated his relationship with MYPRIVATEDOC.com ir February 2001. During the time he was associated with MYPRIVATEDOC.com Respondent received approximately $52,000. From April 2001 through August 200 Respondent worked with the internet web site "MEDSWORLDWIDE.com". The referra and evaluation process used by Respondent at MEDSWORLDWIDE.com was essentially

the same as with MYPRIVATEDOC.com. Respondent was paid $70 per consultation by MEDSWORLDWIDE.com and in total received approximately $36,000. In August 2001 when Respondent severed his relationship with MEDSWORLDWIDE.com he started his own web site "EXPRESSMEDCARE.com".

d. Respondent associated with a Florida pharmacy that issued the medications prescribed on EXPRESSMEDCARE.com. Respondent charged $100 to $125 per consultation. Respondent estimated that he consulted with approximately 900 patients until December 21, 2001 when the DEA confiscated his computer.

e. Respondent did not maintain any medical records on the patients he prescribed to over the internet.

5. Respondent originally appeared before the Board for a formal interview in June 2002. Respondent was asked how his conduct fit into what reasonably prudent physicians would consider the prudent and reasonable practice of medicine. Respondent testified that another physician he has known for over 18 years and with whom he worked on other business ventures in the past recommended internet prescribing to him. Respondent stated that when he was approached to do internet prescribing he had just lost his privileges at Mesa Lutheran Hospital, a hospital where 90% of his patient volume was generated. According to Respondent, the physician who recommended he engage in this practice knew Respondent needed help generating income.

6. Respondent testified that he was unaware of any law that said he could not prescribe without doing a physical examination and believed the practice was harmless. Respondent stated he was assured that attorneys would be consulted to guide the business in the right path in terms of regulatory boards and that there were no laws or statutes regarding this practice. Respondent noted that another physician who was considering engaging in this conduct stated that he was going to call the Board to see if i

was permissible. When Respondent saw that the other physician was prescribing over the internet he assumed that the Board had told the other physician that it was acceptable.

7. Respondent testified that he was disturbed when towards the end of February 2001 the owners of an internet web site informed him that the DEA had visited with them and given them the option of voluntarily shutting down, or being shut down by the DEA. The owner of the pharmacy Respondent used through MYPRIVATEDOC.com informed Respondent that the DEA had also visited him and questioned him.

8. Respondent was asked what educational material he had read that supports the ongoing prescribing of the types of medication he had prescribed without a direct patient evaluation. Respondent stated that he had not prescribed medication on an ongoing basis and had only done so for patients on a temporary basis while they established with a local physician. The Board noted that the record of prescriptions refilled by Respondent did not support this contention.

9. Respondent testified that he did not do any primary source verification of the patient's complaint, for instance, he did not review records, reports of tests, physical therapy consultations and the like. Respondent was unable to satisfactorily explain how he distinguished between drug seeking patients and patients who may have had legitimate need for pain medication. According to Respondent, he became involved in internet prescribing because of his interest in helping the community and his concern for internet patients, most of whom had either lost their insurance, no longer had a primary care physician because of a physician's retirement or relocation, or were unable to find a physician to satisfactorily treat their pain.

10. Respondent testified that he discontinued prescribing over the internet in December 2001 when the DEA approached him. Respondent was asked to reconcile his statements that he started prescribing over the internet out of concern for patients who

had no insurance or were in transit and did not have a local physician with his having started this practice after he lost his privileges and a large portion of his income. Respondent stated that he been experiencing financial problems long before he lost his privileges and started to prescribe over the internet.

11. Respondent was unable to list the side effects of amitriptyline, a drug he prescribed.

12. Respondent testified that he stated that he set up his own web site after receiving complaints from patients that it took a long time to get the medication from the other websites and that MEDSWORLDWIDE.com told him that the DEA approached MYPRIVATEDOC.com because of the fee splitting arrangement between the web site and the pharmacy that filled the prescriptions. Also, Respondent testified that, although MYPRIVATEDOC.com was charging the patients $100 per consultation, he was only being paid $20 per consultation. When Respondent prescribed from his own web site he charged $100 to $125 per consultation. Respondent testified that when he started his own web site he did not contract with a pharmacy, but used the same Florida pharmacy as MEDSWORLDWIDE.com. According to Respondent, he did not fee split with the pharmacy because he believed it was illegal.

13. At the conclusion of the June 5, 2002 interview, the Board expressed concern that Respondent appeared to have a relatively poor understanding of the management of chronic pain and that Respondent was in a high stress situation with relatively little understanding of the basic pharmacology of the drugs he was prescribing. Accordingly, the Board continued the interview and ordered Respondent to undergo a clinical competency evaluation ("PLAS") with 60 days. Respondent also agreed not to prescribe any scheduled medications to patients outside of his regular obstetric and gynecological practice until further order of the Board.

14. The Board resumed Respondent's formal interview on February 12, 2003.

15. The Board noted that the PLAS evaluation showed that Respondent performed satisfactorily in obstetrics and gynecology, his area of specialty, and that he was deficient in pharmacologic therapies outside his specialty and in ethics and communication.

16. Respondent indicated that his current practice was a solo, office-based, obstetrics and gynecology practice. Respondent noted that he did not currently have staff privileges at any hospital, but that privileges at certain hospitals were pending the resolution of this matter. Respondent testified that, because he does not have hospital privileges, he transfers care of obstetric patients to another group of physicians in approximately the 35th or 36th week of the patient's pregnancy. Respondent noted that there had been no action against his DEA certificate. Respondent testified that since the June formal interview he had not prescribed controlled substances to any patient outside of his obstetrics and gynecology practice and, even then, it is a very rare situation that his patients require controlled substances unless they are post-surgical patients.

17. Respondent noted that the PLAS evaluation was very objective and he gained from it. Respondent stated that at one point during the evaluation he went through at least five hours of testing involving many areas of medicine. Respondent testified that, from when the Board ordered the evaluation in June, he spent time preparing for the evaluation and that he has already taken the Physician Assessment Clinical Education Program ("PACE") prescribing course because it is very important to him to understand the gravity of the Board's concern. Respondent stated that he took the PACE prescribing course after attending the October Board where PACE made a presentation to the Board that included a description of the course.

18. Respondent testified that he believes he is involved in medical care to be a benefit to society and he took a very superficial, naïve approach to chronic pain management, but he did so to help working class people get care.

19. Respondent testified that, because he had only been informed of the PLAS results within the last week, he had not taken any other continuing medical education ("CME") courses in areas noted as weaknesses in the PLAS evaluation. The Board noted that it was impressed with the evaluation and that it was obvious that Respondent had worked hard for it. Respondent was asked how much CME he had taken in the last year. Respondent noted that he had over 60 CME credits, including credits in medical complications associated with obstetrics and gynecology; endocrinology and infertility; urogynecology; complications of gynecologic surgery; the latest information in obstetrics in terms of evaluating premature labor, retardation and complications in pregnancy such as hypertension and diabetes. Respondent also noted that he took courses in migraine headache management and congestive heart failure.

20. Respondent testified that what he did was wrong and he should have never gotten involved with internet prescribing, based especially on what he has learned through the prescribing CME course that pain management takes a comprehensive evaluation and a longitudinal approach, an on-going approach to evaluating patients to make sure their care is appropriate. Respondent stated that he never even considered the possibility of diversion or abuse by the internet patients.

21. The standard of care for the management of prescribing medications, with the exception of emergent situations, requires there be a doctor-patient relationship established on a face-to-face basis before prescribing a medication.

22. Respondent's conduct was unreasonable, given the standard of care, because he prescribed medications over the internet without first establishing a face-to-face doctor-patient relationship with those to whom he prescribed.

23. The potential harm resulting from Respondent's conduct includes patients becoming addicted to the medications prescribed and the harm to others in the community through the diversion of medications.

CONCLUSIONS OF LAW

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

2. The Board has received substantial evidence supporting the Findings of Fact described above and said findings constitute unprofessional conduct or other grounds for the Board to take disciplinary action.

3. The conduct and circumstances above in paragraphs 3 through 6, 8 through 11, and 20 through 23 constitute unprofessional conduct pursuant to A.R.S. § § 32-1401(24)(e) ("[f]ailing or refusing to maintain adequate records on a patient;") 32-1401(24)(q) ("[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public;") and 32-1401(24)(ss) ("[p]rescribing, dispensing or furnishing a prescription medication or a prescription-only device . . . to a person unless the licensee first conducts a physical examination of that person or has previously established a doctor-patient relationship . . . .").

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ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that:

1. Respondent is issued a Decree of Censure for prescribing narcotics and managing chronic pain patients over the internet without establishing a face-to-face doctor-patient relationship.

2. Within one year of the effective date of this Order Respondent shall pay a civil penalty of $10,000.

3. Respondent is placed on probation for ten years with the following terms and conditions:

a. Respondent shall prescribe Schedule II and III drugs only for those individuals who are established patients of his obstetrics and gynecology practice.

b. Within one year of the effective date of this Order Respondent shall obtain 20 hours of Board-Staff pre-approved Category I continuing medical education ("CME") in ethics and 15 hours of Board-Staff pre-approved Category I CME in record keeping. The CME hours are in addition to the hours required for biennial medical license renewal. Board Staff or its agents shall conduct a chart review within one year of completion of the recordkeeping CME. The Board retains jurisdiction to take additional disciplinary or remedial action based upon the chart review.

c. Respondent shall pay the costs associated with monitoring his probation as designated by the Board each and every year of probation. Such costs may be adjusted on an annual basis. Costs are payable to the Board no later than 60 days after invoice is sent to Respondent and thereafter on an annual basis. Failure to pay these costs within 30 days of the due date constitutes a violation of probation.

d. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation. The declarations shall be submitted on or before the 15th of March, June, September and December of each year, beginning on or before December 15, 2003.

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. The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-102. Service of this order is effective five (5) days after date of mailing. If a motion 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 14th day of May, 2003.

ARIZONA MEDICAL BOARD

BARRY A. CASSIDY, Ph.D., PA-C
Executive Director

ORIGINAL of the foregoing filed this 14th day of MAY, 2003 with:

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

Executed copy of the foregoing
mailed by U.S. Certified Mail this
14th day of MAY, 2003, to:

Dan Jantsch
Olson, Jantsch & Bakker PA
7243 North 16th Street
Phoenix, Arizona 85020-7250

Executed copy of the foregoing
mailed by U.S. Mail this
14th day of MAY, 2003, to:

Marvin Gibbs, M.D.
2034 East Southern Avenue
Suite U
Tempe, Arizona 85282-7519

Copy of the foregoing hand-delivered this
14th day of MAY, 2003, to:

Christine Cassetta
Assistant Attorney General
Sandra Waitt, Management Analyst
Compliance
Investigations (Investigation File)
Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

Brenda Holub

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.	**Case No. MD-06-0207A** **INTERIM FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR SUMMARY SUSPENSION OF LICENSE**

INTRODUCTION

The above-captioned matter came on for discussion before the Arizona Medical Board ("Board") on August 24, 2006. After reviewing relevant information and deliberating, the Board considered proceedings for a summary action against the license of Marvin L. Gibbs, M.D. ("Respondent"). Having considered the information in the matter and being fully advised, the Board enters the following Interim Findings of Fact, Conclusions of Law and Order for Summary Suspension of License, pending formal hearing or other Board action. A.R.S. § 32-1451(D).

INTERIM FINDINGS OF FACT

1. The Board is the duly constituted 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 the State of Arizona.

3. The Board initiated case number MD-06-0207A after receiving a complaint from another physician regarding Respondent's care and treatment of a 35-year old male patient ("JZ"). The complaint alleged Respondent failed to appropriately treat JZ's erectile dysfunction leading to priapism lasting for one week.

4. On January 3, 2006 Respondent evaluated JZ. In his medical history JZ stated he maintained an erection for thirteen minutes after penetration and he desired the time to be two

hours. Respondent diagnosed JZ with premature ejaculation. Respondent prescribed penile injection therapy. Respondent did not offer JZ any conventional alternative treatments.

5. Respondent's prescribed a test dose of .24 ccs **of what Respondent calls a "trimix" consisting of 5.9 mcg of PGE1/ml, 17.65 mg of paparerine/mg, and .59 mg of phentolamine** resulting in JZ maintaining an erection lasting between three hours and twenty minutes and five hours. JZ required 240 mg of oral Sudafed to resolve the erection. Based on this event, Respondent prescribed a dose of .15 ccs with a target erection time of two hours. JZ presented to Respondent with a history of having injected himself twice on January 11 and having a sixteen hour erection. Respondent maintained JZ on the same dose. On January 18 Respondent added more saline to the injections, but continued the same total dose of medication.

6. On January 26 JZ presented to Respondent at 10:30 a.m. Respondent's records reflect JZ had priapism of thirteen and one-half hours duration that developed after he took the prescribed dose. However, the complaining physician states JZ's priapism lasted one week. Respondent treated JZ with injection and aspiration and the priapism appeared to resolve. JZ had recurrent priapism and returned to Respondent at 4:40 p.m. Respondent again injected and aspirated JZ, but without good result. At 7:14 p.m. Respondent arranged for JZ's transfer to the emergency room. By this time it was at least twenty-two hours after JZ's erection began. In his response to the Board, Respondent states this event must have been precipitated by JZ's overuse of the medication, but this is not documented in the chart.

7. JZ sought care from a urologist who states JZ will likely have permanent erectile dysfunction. The Board's Medical Consultant opined that penile injection is not therapy for premature ejaculation. Respondent filed an extensive response with multiple documents he claimed supported his treatment. The Medical Consultant reviewed the response and concluded Respondent is in effect prescribing priapism and there is no valid literature to support this

treatment plan. The Medical Consultant provided literature supporting his position. The Medical Consultant also criticized Respondent's failure to offer the patient common treatment options and concluded Respondent lacks a basic understanding of the treatment of premature ejaculation and lacks the ability to understand or follow established treatment guidelines.

8. An aggravating factor is the Medical Consultant's concerns are very similar to the Board's concerns regarding Respondent's practice patterns. Specifically, in 2003 the Board issued a Decree of Censure for internet prescribing and restricted Respondent's prescribing of Schedule II and III controlled substances. In its 2003 Order the Board expressed "concern that Respondent appeared to have a relatively poor understanding of the management of chronic pain . . . and relatively little understanding of the basic pharmacology of the drugs he was prescribing." An additional aggravating factor is the Drug Enforcement Agency's ("DEA") February 20, 2004 Order revoking Respondent's prescribing certificate and finding Respondent practiced beyond the scope of his expertise solely for the purpose of financial gain. An additional aggravating factor is that when Respondent lost hospital obstetrical privileges he turned to the internet prescribing (for which he was disciplined in 2003). Respondent then lost prescribing privileges and turned to treating sexual dysfunction in addition to his obstetrics practice.

9. If Respondent was restricted from treating sexual dysfunction he may turn to another area of medicine in which he is not qualified to practice.

10. The facts as presented demonstrate that the public health, safety or welfare imperatively requires emergency action.

INTERIM CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent, holder of License No. 13736 for the practice of allopathic medicine in the State of Arizona.

2. The conduct and circumstances described above constitute unprofessional

conduct pursuant to A.R.S. § 32-1401(27)(e) ("[f]ailing or refusing to maintain adequate records on a patient"); 32-1401(27)(q) ("[a]ny conduct or practice that is or might be harmful or dangerous to the health or the patient or the public"); and 32-1401(27)(ll) ("[c]onduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient").

3. Based on the foregoing Interim Findings of Fact and Conclusions of Law, the public health, safety or welfare imperatively requires emergency action. A.R.S. § 32-1451(D).

ORDER

Based on the foregoing Interim Findings of Fact and Conclusions of Law, set forth above, IT IS HEREBY ORDERED THAT:

1. Respondent's license to practice allopathic medicine in the State of Arizona, License No. 13736, is summarily suspended pending a formal hearing before an Administrative Law Judge from the Office of Administrative Hearings.

2. The Interim Findings of Fact and Conclusions of Law constitute written notice to Respondent of the charges of unprofessional conduct made by the Board against him. Respondent is entitled to a formal hearing to defend these charges as expeditiously as possible after the issuance of this order.

3. The Board's Executive Director is instructed to refer this matter to the Office of Administrative Hearings for scheduling of an administrative hearing to be commenced as expeditiously as possible from the date of the issuance of this order, unless stipulated and agreed otherwise by Respondent.

DATED this 25th day of August 2006.

[SEAL]

ARIZONA MEDICAL BOARD

By _____
Timothy C. Miller, J.D.
Executive Director

ORIGINAL of the foregoing filed this 25th day of August, 2006, with:

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

EXECUTED COPY of the mailed by First Class mail this 25th day of August 2006 to:

Marvin Leo Gibbs, M.D.
(Address of record)

Dean Brekke
Assistant Attorney General
Arizona Attorney General's Office
1275 West Washington, CIV/LES
Phoenix, Arizona 85007

_____

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 REVOCATION 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28. Respondent dispensed prescribed injectable medications to J.E. through his employee in March 2007 without having a dispensing certificate.

29. On or about April 12, 2007 Respondent appeared with patient J.E. at the emergency department of St. Luke's hospital in Tempe, Arizona. J.E. presented with priapism that had lasted at least 48 hours. The emergency department staff was under the impression that Respondent was an actively licensed physician based upon their interactions with him. J.E. had surgery to resolve his condition.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent and the subject matter of this case.

2. The standard of proof in this matter is preponderance of the evidence. A.A.C. R2-19-119(A).

3. Respondent violated the provisions of A.R.S. § 32-1401(27)(a), specifically A.R.S. § 32-3202(A), by practicing medicine while his license was suspended.

4. Respondent violated the provisions of 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 this chapter.").

5. The evidence of record supports the Board's summary suspension of Respondent's medical license on April 19, 2007 to protect the public health, safety or welfare. A.R.S. § 32-1451(D).

6. Respondent should be assessed the costs of the formal hearing.

ORDER

Based upon the Findings of Fact and Conclusions of Law as adopted, the Board hereby enters the following Order:

1. The summary suspension of Respondent's License No. 13736 shall remain in full force and effect until the effective date of the Order entered in Case No. MD-07-0247A.

2. Respondent's License No. 13736 is revoked on the effective date of this Order and Respondent shall return his wallet card and certificate of licensure to the Board.

3. Respondent's License No. 13736 is deemed expired for failure to timely renew.

4. Respondent shall be assessed the costs of the formal hearing paid by Respondent to the Board within thirty (30) days of being invoiced by the Board, unless such deadline date is extended by the Board or authorized Board Staff.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review by filing a petition with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09. The petition must set forth legally sufficient reasons for granting a rehearing. A.C.C. R4-16-102. Service of this order is effective five (5) days after date of mailing. If a motion for rehearing 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 is required to preserve any rights of appeal to the Superior Court.

Dated this 9th day of August, 2007.

ARIZONA MEDICAL BOARD

By: _____
Timothy C. Miller, J.D.
Executive Director

Original of the foregoing filed this 9th day of August, 2007, with:

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

Copy of the foregoing filed this 28th day of August, 2007, with:

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

Executed copy of the foregoing mailed by US Mail this 28th day of August, 2007, to:

Daniel P. Jantsch
Olson, Jantsch & Bakker
7243 N. 16th St.
Phoenix, Arizona 85020

Marvin L. Gibbs, M.D.
(Address of record)

Dean Brekke
Assistant Attorney General
Office of the Attorney General
CIV/LES
1275 W. Washington
Phoenix, Arizona 85007