

1 **RIGHT TO APPEAL TO SUPERIOR COURT**

2 Respondent is hereby notified that he has exhausted his administrative remedies.
3 Respondent is advised that an appeal to Superior Court in Maricopa County may be taken
4 from this decision pursuant to title 12, chapter 7, article 6 of the Arizona Revised Statutes
5 within thirty-five (35) days from the date this decision is served.

6 DATED AND EFFECTIVE this 10th day of May, 2023.

7 ARIZONA MEDICAL BOARD

8
9
10 By 
11 Patricia E. McSorley
12 Executive Director


13 EXECUTED COPY of the foregoing mailed via
14 US and Certified Mail
15 this 10th day of May, 2023 to:

16 Dean R. Silver, M.D.
17 Address of Record

18 Michael K. Goldberg
19 16427 N. Scottsdale Rd., Suite 200
20 Scottsdale, Arizona 85254
21 Attorney for Respondent

22 ORIGINAL of the foregoing filed
23 this 10th day of May, 2023 with:

24 Arizona Medical Board
25 1740 West Adams, Suite 4000
Phoenix, Arizona 85007


Board staff

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BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of
DEAN R. SILVER, M.D.,
Holder of License No. 38223
For the Practice of Allopathic Medicine
In the State of Arizona.

Case No.22A-38223-MDX
**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**
**(Board Case Nos. MD-18-0983A
and MD-21-0024A)**

On March 1, 2023, this matter came before the Arizona Medical Board ("Board") for consideration of Administrative Law Judge ("ALJ") Tammy L. Eigenheer's proposed Findings of Fact, Conclusions of Law and Recommended Order. Michael Goldberg appeared on behalf of Dean R. Silver, M.D. ("Respondent"); Assistant Attorney General Elizabeth Campbell represented the State. Assistant Attorney General Ben Norris 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 (Board) is the authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.
2. Dean R. Silver, M.D., (Respondent) is the holder of License No. 38223 for the practice of allopathic medicine in Arizona.
3. On or about November 4, 2022, the Board issued a Complaint and Notice of Hearing to Respondent alleging Respondent had engaged in unprofessional conduct pursuant to A.R.S. § 32-1401(27)(e),¹ A.R.S. § 32-1401(27)(t),² A.R.S. § 32-1401(27)(u),³

¹ A.R.S. § 32-1401(27)(e) defines "unprofessional conduct" to include "[f]ailing or refusing to maintain adequate records on a patient."
² A.R.S. § 32-1401(27)(t) defines "unprofessional conduct" to include "[v]iolating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of this chapter."
³ A.R.S. § 32-1401(27)(u) defines "unprofessional conduct" to include "[k]nowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution."

1 A.R.S. § 32-1401(27)(v),⁴ A.R.S. § 32-1401(27)(w),⁵ A.R.S. § 32-1401(27)(x),⁶ and A.R.S.
2 § 32-1401(27)(kk).⁷

3 **MD-18-0983A**

4 4. The Board initiated case number MD-18-0983A after receiving a complaint
5 from the estate of Patient JW regarding payment Respondent claimed he was owed.
6 Respondent claimed that he was still owed \$36,800 from the estate of JW for treatment
7 rendered.

8 5. On October 26, 2015, JW sought treatment with Respondent related to her
9 breast cancer. JW paid Respondent \$500.

10 6. On October 27, 2015, JW signed a "Cost of Care Certification and
11 Agreement" with Silver Institute for Life Extension Medicine/Dean R. Silver, M.D., M.D.(H)
12 ("the Agreement"). As set forth in the Agreement, charges for treatment "are estimated to
13 amount to \$6800 /for 3 weeks and I have agreed to pay weekly such amount." JW initialed
14 Exhibit "A" to the Agreement stating that the treatment was planned to be provided over a
15 period of 3 weeks. The treatment total was shown to be \$20,400, or \$6,800 X 3.

16 7. In October and November 2015, Respondent treated JW with IV therapies.

17 ⁴ A.R.S. § 32-1401(27)(v) defines "unprofessional conduct" to include the following:

18 Charging a fee for services not rendered or dividing a professional fee for patient referrals
19 among health care providers or health care institutions or between these providers and
20 institutions or a contractual arrangement that has the same effect. This subdivision does not
21 apply to payments from a medical researcher to a physician in connection with identifying
22 and monitoring patients for a clinical trial regulated by the United States food and drug
23 administration.

24 ⁵ A.R.S. § 32-1401(27)(w) defines "unprofessional conduct" to include "[o]btaining a fee by fraud, deceit or
25 misrepresentation."

⁶ A.R.S. § 32-1401(27)(x) defines "unprofessional conduct" to include the following:

26 Charging or collecting a clearly excessive fee. In determining whether a fee is clearly
27 excessive, the board shall consider the fee or range of fees customarily charged in this state
28 for similar services in light of modifying factors such as the time required, the complexity of
29 the service and the skill requisite to perform the service properly. This subdivision does not
30 apply if there is a clear written contract for a fixed fee between the physician and the patient
31 that has been entered into before the provision of the service.

- 1 8. On November 19, 2015, JW paid Respondent \$20,725 (\$8,725 + \$12,000).
- 2 9. On November 23, 2015, JW paid Respondent \$4,550 (\$1,825+\$2,725).
- 3 10. Between October and November 2015, JW paid Respondent a total of
4 \$25,775.
- 5 11. JW died of cancer on July 12, 2016.
- 6 12. Beginning in August 2017, Respondent made claims against JW's estate for
7 what he asserted were unpaid medical bills in the amount of \$36,800.
- 8 13. On December 5, 2017, Respondent sent JW's executor an invoice showing
9 that a total of \$44,500 was due for JW's treatments.
- 10 14. In March 2018, Respondent sent the executor a copy of the Agreement, but
11 the Agreement had been altered to show \$56,800 for 3 weeks' treatment.
- 12 15. In March 2018, Respondent sent the executor invoices in the varying
13 amounts of \$68,500, \$55,025, and \$57,525.
- 14 16. The cost for the IV infusion ingredients varied between the multiple invoices.
15 No explanation for the differences was documented on the invoices or in the medical
16 records.⁸
- 17 17. As part of its investigation and by letter dated October 25, 2018, the Board
18 requested that Respondent provide JW's complete medical chart by November 8, 2018.
- 19 18. On November 30, 2018, Respondent, through his attorney, sent the Board a
20 "summary" of JW's treatments. In this summary, Respondent claimed that JW had received
21 IV treatments on November 11, 12 and 13, 2015.
- 22 19. On November 30, 2018, Respondent, through his attorney, sent the Board
23 JW's medical records, specifically including IV infusion records. The records sent on
24 November 30, 2018, did not include IV infusion records for Patient JW for November 12
25 and 13, 2015.

⁷ A.R.S. § 32-1401(27)(kk) defines "unprofessional conduct" to include "[k]nowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board."

⁸ Through his attorney, Respondent claimed that, at JW's request, he had increased the concentrations and reduced the number of treatments, resulting in a different (and higher) payment amount. There is no documentation in the medical record that JW requested or received IV treatments at increased levels of concentration.

1 36. Respondent testified that he did not know anything regarding the finances of
2 his office and that he signed documents when he was told to sign documents. As such,
3 Respondent was unable to make any comment on the different versions of the agreement
4 signed by JW.

5 37. When questioned about JW's medical records for November 12 and 13,
6 2015, when JW was out of state, Respondent stated that the medical records for those
7 dates appeared to be an attempt to order the IV treatments in advance of JW's arrival.
8 Respondent was unable to explain why the patient's blood pressure and temperature were
9 recorded on the page. Respondent

10 38. According to Respondent, after WC was discharged from his care on June
11 26, 2017, WC returned to seek additional treatment until October 2017. Respondent then
12 started maintaining handwritten medical records separate from WC's existing file for
13 reasons that were not entirely clear to the Administrative Law Judge. Respondent
14 indicated it was because of WC's family's concerns regarding the cost of the care and
15 possible malpractice claims, but denied that he was attempting to hide that WC was a
16 patient of his. Respondent stated that when the malpractice case involving WC was
17 proceeding, he had provided his attorney with all of WC's medical records. Then, when the
18 Board requested WC's medical records from Respondent, he merely forwarded the
19 medical records he had previously provided to his attorney to the Board. Respondent
20 asserted that he only discovered the handwritten medical records in a box after receiving
21 the Complaint and Notice of Hearing in this matter.

22 39. Respondent testified at the hearing that, during a break, Ms. Silver notified
23 him that they had more treatment plans that he asked leave to submit. Respondent was
24 informed that he had numerous opportunities to provide the medical records to the Board
25 and to the tribunal prior to the hearing. Respondent asserted that he did not know that the
Administrative Law Judge did not have the records.

 40. Ms. Silver asserted that the change in price for JW's treatment was because
she wanted to aggressively treat her cancer, which meant higher doses of the IV therapies
and chemotherapy. Ms. Silver was unable to explain the medical records indicating
therapies given when JW was out of state.

1 7. The weight of the evidence presented established by clear and convincing
2 evidence that Respondent made false and fraudulent statements related to the billing and
3 treatment of JW as detailed above.

4 8. The weight of the evidence presented established by clear and convincing
5 evidence that Respondent charged a clearly excessive fee for the treatment provided to
6 WC as detailed above.

7 9. The weight of the evidence presented established by clear and convincing
8 evidence that Respondent knowingly made false or misleading statements to the Board
9 regarding the billing and treatment of JW as detailed above.

10 10. Therefore, the Board established that Respondent's conduct constituted
11 unprofessional conduct pursuant to A.R.S. § 32-1401(27)(e) in that he failed or refused to
12 maintain adequate records for his patients as defined by A.R.S. § 32-1402(2).

13 11. Further, the Board established that Respondent's conduct constituted
14 unprofessional conduct pursuant to A.R.S. § 32-1401(27)(t), specifically A.R.S. § 32-
15 1401(27)(v) and A.R.S. § 32-1401(27)(w), in that he charged a fee for services not
16 rendered and attempted to collect fees by misrepresenting the agreed upon fees.

17 12. Further, the Board established that Respondent's conduct constituted
18 unprofessional conduct pursuant to A.R.S. § 32-1401(27)(u) in that he knowingly made
19 false or fraudulent statements in connection with the practice of medicine relating to the
20 billing and treatment of JW.

21 13. Further, the Board established that Respondent's conduct constituted
22 unprofessional conduct pursuant to A.R.S. § 32-1401(27)(x), in that he charged WC a fee
23 that was clearly excessive for the treatment provided as documented in the medical
24 records.

25 14. Finally, the Board established that Respondent's conduct constituted
unprofessional conduct pursuant to A.R.S. § 32-1401(27)(kk) in that Respondent knowingly
made false statements to the Board regarding the billing and treatment of JW.

 15. Pursuant to A.R.S. § 32-1451(M), "[t]he board may charge the costs of formal
hearings to the licensee who it finds to be in violation of this chapter."

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ORDER

Based on the foregoing, it is **ORDERED** that on the effective date of the final order in this matter, Dean R. Silver, M.D.'s License No. 38223 for the practice of allopathic medicine in the State of Arizona shall be revoked.

It is further **ORDERED** that Dean R. Silver, M.D., is charged for the cost of the formal hearing in the amount of \$ 2,476.56 to be paid to the Board by certified funds within 90 days of 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.

DATED this 2nd day of March 2023.

THE ARIZONA MEDICAL BOARD

By Patricia E. McSorley
Patricia E. McSorley
Executive Director

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ORIGINAL of the foregoing filed this
1st day of March, 2023 with:

Arizona Medical Board
1740 W. Adams, Suite 4000
Phoenix, Arizona 85007

COPY of the foregoing filed
this 2nd day of March 2023 with:

Greg Hanchett, Director
Office of Administrative Hearings
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Phoenix, AZ 85007

Executed copy of the foregoing
mailed by U.S. Mail and emailed
this 2nd day of March, 2023 to:

Dean R. Silver, M.D.
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