# BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

DEAN R. SILVER, M.D.

In the State of Arizona

Holder of License No. 38223

For the Practice of Allopathic Medicine

Case No. 22A-38223-MDX

# ORDER DENYING REQUEST FOR REHEARING OR REVIEW

At its public meeting on May 3, 2023, the Arizona Medical Board ("Board") considered Dean R. Silver, M.D.'s ("Respondent") Motion for Review of the Board's Order dated March 2, 2023 in the above referenced matter. Respondent was present and represented by Counsel, Michael Goldberg, Esq. The State was represented by Assistant Attorney General Elizabeth Campbell. The Board received independent legal advice from Assistant Attorney General Diane DeDea. After considering all of the evidence, including arguments of the parties, the Board voted unanimously to deny Respondent's Request for Rehearing or Review for the reason that he failed to demonstrate that he was entitled to a rehearing for any of the reasons set forth in A.A.C. R4-16-103(D).

# <u>ORDER</u>

#### IT IS HEREBY ORDERED that:

Respondent's Request for Rehearing or Review is denied. The Board's March 2, 2023 Findings of Fact, Conclusions of Law, and Order for revocation of Respondent's license in Case 22A-38223-MDX is effective and constitutes the Board's final administrative order.

# RIGHT TO APPEAL TO SUPERIOR COURT

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

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

ARIZONA MEDICAL BOARD

Patricia E. McSorley

Executive Director

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

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

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

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

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

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24 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.
- On or about November 4, 2022, the Board issued a Complaint and Notice of 3. Hearing to Respondent alleging Respondent had engaged in unprofessional conduct pursuant to A.R.S. § 32-1401(27)(e), A.R.S. § 32-1401(27)(t), A.R.S. § 32-1401(27)(u), 3

<sup>&</sup>lt;sup>1</sup> A.R.S. § 32-1401(27)(e) defines "unprofessional conduct" to include "[fjailing or refusing to maintain adequate records on a patient."

A.R.S. § 32-1401(27)(t) defines "unprofessional conduct" to include "[v]iclating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of this chapter."

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."

A.R.S. § 32-1401(27)(v),<sup>4</sup> A.R.S. § 32-1401(27)(w),<sup>5</sup> A.R.S. § 32-1401(27)(x),<sup>6</sup> and A.R.S. § 32-1401(27)(kk).<sup>7</sup>

#### MD-18-0983A

- 4. The Board initiated case number MD-18-0983A after receiving a complaint from the estate of Patient JW regarding payment Respondent claimed he was owed. Respondent claimed that he was still owed \$36,800 from the estate of JW for treatment rendered.
- 5. On October 26, 2015, JW sought treatment with Respondent related to her breast cancer. JW paid Respondent \$500.
- 6. On October 27, 2015, JW signed a "Cost of Care Certification and Agreement" with Silver Institute for Life Extension Medicine/Dean R. Silver, M.D., M.D.(H) ("the Agreement"). As set forth in the Agreement, charges for treatment "are estimated to amount to \$6800 /for 3 weeks and I have agreed to pay weekly such amount." JW initialed Exhibit "A" to the Agreement stating that the treatment was planned to be provided over a period of 3 weeks. The treatment total was shown to be \$20,400, or \$6,800 X 3.
  - 7. In October and November 2015, Respondent treated JW with IV therapies.

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

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

<sup>&</sup>lt;sup>4</sup> A.R.S. § 32-1401(27)(v) defines "unprofessional conduct" to include the following:

<sup>&</sup>lt;sup>5</sup> A.R.S. § 32-1401(27)(w) defines "unprofessional conduct" to include "[o]btaining a fee by fraud, deceit or misrepresentation."

<sup>&</sup>lt;sup>8</sup> A.R.S. § 32-1401(27)(x) defines "unprofessional conduct" to include the following:

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

<sup>&</sup>lt;sup>7</sup> 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."

<sup>&</sup>lt;sup>8</sup> 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.

- 20. On May 7, 2019, Respondent, through his attorney, provided two additional records purporting to be JW's IV infusion records for November 12 and 13, 2015.
- 21. The two IV infusion records provided in May 2019 lacked the detail, specifically infusion times, included in the IV infusion records sent in April.
- 22. JW was in New Jersey on at least November 12 and 13, 2015. Consequently, Respondent could not have treated JW with IV infusions on those dates.

#### MD-21-0024A

- 23. The Board initiated case number MD-21-0024A after receiving notification of a settlement regarding Respondent's care and treatment of WC, an 85 year-old male patient.
- 24. By letter dated February 16, 2021, the Board requested that Respondent provide WC's complete medical record by March 2, 2021. Respondent provided medical records to the Board in March 2021.
- 25. On April 5, 2017, WC signed a Financial Agreement Contract with Respondent agreeing to pay an estimated \$20,000 for his course of treatment with Respondent.
- 26. WC had only four documented patient encounters with Respondent: March 29, April 3, May 23, and June 21, 2017.
- 27. Respondent provided treatment to WC for conditions specifically including dementia related to Alzheimer's disease. Respondent's treatment appeared to have consisted primarily of IV infusions.
- 28. On June 26, 2017, after WC's adult daughters, who were also co-trustees of a trust established by WC, expressed concerns about the amount Respondent was billing WC, Respondent discharged WC from his practice.
- 29. In a letter to the Board dated November 1, 2021, Respondent attempted to justify the amount he charged WC and claimed that he continued to treat WC with IV therapy until September 27, 2017. Respondent did not submit any medical records to support his assertion that he continued to treat WC after June 26, 2017.

30. WC paid Respondent at least \$114,755 for less than three months of treatment, at least \$46,000 of which was billed by Respondent and paid by or on behalf of WC after discharge.

# **Hearing Evidence**

- 31. At hearing, the Board presented the testimony of Respondent; Scott Milton Jensen, M.D.; Medical Consultant; Julia Simmons, JW's sister; and Raquel Rivera, Investigations Manager.
- 32. At hearing, Respondent testified on his own behalf and presented the testimony of Jeannette Silver, his wife and Office Manager.
- 33. After the Board issued the Complaint and Notice of Hearing, Respondent submitted handwritten medical records for WC that he purportedly located in storage. The handwritten medical records did not look anything like the prior medical records for WC. The Board asserted that the medical records appeared to have been fabricated after the fact.
- 34. Dr. Jensen testified that, with respect to WC, the treatment provided was within the standard of care for WC's condition. Dr. Jensen received records documenting four office visits, on March 29, 2017, April 3, 2017, May 23, 2017, and June 21, 2017. However, Dr. Jensen concluded that the records of those visits Respondent submitted to the Board were not sufficient to justify \$114,755.00 in billing. Specifically, Respondent failed to provide any documentation detailing what IV treatments were administered or when. Further, Dr. Jensen opined that the handwritten medical records Respondent later submitted were also inadequate to justify the billing. Dr. Jensen admitted that if Respondent had documentation of IV therapies administered to WC during the time period, it may be enough to justify the billing, but based on the records submitted, the billing was "clearly excessive."
- 35. Ms. Simmons testified that, as the executor of JW's estate, she attempted to determine if any outstanding balance was owed to Respondent. Ms. Simmons was given varying amounts owed at different times and was concerned with the discrepancies. Upon review of JW's medical records, Ms. Simmons discovered that JW had purportedly received treatment from Respondent on multiple days when she was out of state.

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

- 37. When questioned about JW's medical records for November 12 and 13, 2015, when JW was out of state, Respondent stated that the medical records for those dates appeared to be an attempt to order the IV treatments in advance of JW's arrival. Respondent was unable to explain why the patient's blood pressure and temperature were recorded on the page. Respondent
- 38. According to Respondent, after WC was discharged from his care on June 26, 2017, WC returned to seek additional treatment until October 2017. Respondent then started maintaining handwritten medical records separate from WC's existing file for reasons that were not entirely clear to the Administrative Law Judge. Respondent indicated it was because of WC's family's concerns regarding the cost of the care and possible malpractice claims, but denied that he was attempting to hide that WC was a patient of his. Respondent stated that when the malpractice case involving WC was proceeding, he had provided his attorney with all of WC's medical records. Then, when the Board requested WC's medical records from Respondent, he merely forwarded the medical records he had previously provided to his attorney to the Board. Respondent asserted that he only discovered the handwritten medical records in a box after receiving the Complaint and Notice of Hearing in this matter.
- 39. Respondent testified at the hearing that, during a break, Ms. Silver notified him that they had more treatment plans that he asked leave to submit. Respondent was informed that he had numerous opportunities to provide the medical records to the Board 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.

41. Respondent's testimony was not credible. Respondent was unable to explain why, when he was being sued for malpractice, he would not have provided his attorney with all of WC's medical records. Further, Respondent was unable to explain why, when the Board notified him that they were investigating a complaint against him and requested WC's medical records, he failed to provide all of WC's medical records. Additionally, Respondent's statements attempting to explain why the "recently discovered" medical records were handwritten and not kept with WC's other medical records were nonsensical.

# **CONCLUSIONS OF LAW**

- The Arizona Board has jurisdiction over Respondent and the subject matter in this case.
- 2. Pursuant to A.R.S. § 41-1092.07(G)(2) and A.A.C. R2-19-119(B), the Board has the burden of proof in this matter. The standard of proof is by clear and convincing evidence. A.R.S. § 32-1451.04.
- 3. The legislature created the Board to protect the public. See Laws 1992, Ch. 316, § 10.
  - 4. A.R.S. 32-1401(2) provides that

"Adequate records" means legible medical records, produced by hand or electronically, containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

- The weight of the evidence presented established by clear and convincing evidence that Respondent's patient records were incomplete and inadequate as detailed above.
- 6. The weight of the evidence presented established by clear and convincing evidence that Respondent's billing of JW included charges for treatment that was not provided and that Respondent attempted to obtain a fee by misrepresentation in using the altered billing agreement to justify increased charges as detailed above.

- 7. The weight of the evidence presented established by clear and convincing evidence that Respondent made false and fraudulent statements related to the billing and treatment of JW as detailed above.
- 8. The weight of the evidence presented established by clear and convincing evidence that Respondent charged a clearly excessive fee for the treatment provided to WC as detailed above.
- 9. The weight of the evidence presented established by clear and convincing evidence that Respondent knowingly made false or misleading statements to the Board regarding the billing and treatment of JW as detailed above.
- 10. Therefore, the Board established that Respondent's conduct constituted unprofessional conduct pursuant to A.R.S. § 32-1401(27)(e) in that he failed or refused to maintain adequate records for his patients as defined by A.R.S. § 32-1402(2).
- 11. Further, the Board established that Respondent's conduct constituted unprofessional conduct pursuant to A.R.S. § 32-1401(27)(t), specifically A.R.S. § 32-1401(27)(v) and A.R.S. § 32-1401(27)(w), in that he charged a fee for services not rendered and attempted to collect fees by misrepresenting the agreed upon fees.
- 12. Further, the Board established that Respondent's conduct constituted unprofessional conduct pursuant to A.R.S. § 32-1401(27)(u) in that he knowingly made false or fraudulent statements in connection with the practice of medicine relating to the billing and treatment of JW.
- 13. Further, the Board established that Respondent's conduct constituted unprofessional conduct pursuant to A.R.S. § 32-1401(27)(x), in that he charged WC a fee that was clearly excessive for the treatment provided as documented in the medical records.
- 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."

# **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 2 day of March 2023.

THE ARIZONA MEDICAL BOARD

Patricia E. McSorley Executive Director

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2	ORIGINAL of the foregoing filed this day of March, 2023 with:
3	Arizona Medical Board
4	1740 W. Adams, Suite 4000 Phoenix, Arizona 85007
5	COPY of the foregoing filed
6	this <u>Oregoing filed</u> this <u>Oregoing filed</u>
7	Greg Hanchett, Director
8	Office of Administrative Hearings 1740 W. Adams
9	Phoenix, AZ 85007
10	Executed copy of the foregoing mailed by U.S. Mail and emailed
11	this <u>2<sup>ny</sup></u> day of March, 2023 to:
12	Dean R. Silver, M.D. Address of Record
13	Respondent
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