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BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of:

Case No: 25A-42668-MDX

CHARLES E. KELLY, M.D.

Holder of License No. 42668
For the Practice of Allopathic Medicine
In the State of Arizona,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER
(License Revocation)**

This matter came before Jenna Clark, Administrative Law Judge (“ALJ”) at the Office of Administrative Hearings on January 8, 2025, for the purpose of determining whether grounds exist to take disciplinary action against Charles E. Kelly, M.D. (“Respondent”). The Respondent did not appear and was not represented by counsel at the hearing; the Board appeared through Assistant Attorney General Seth Hargraves.

At a Special Telephonic Meeting held on March 5, 2025, the Arizona Medical Board (“Board”) considered whether to adopt, modify or reject the ALJ’s Decision and Order, dated January 28, 2025. Ben Norris, Assistant Attorney General, was present remotely to provide the Board with independent legal advice. Respondent did not appear and was not represented by counsel. Assistant Attorney General Seth Hargraves appeared remotely on behalf of the State. Mr. Hargraves requested that the Board consider modifying paragraphs 14.a, e & h of the Findings of Fact to correct minor typographical errors and omissions; and the Recommended Order (which required Respondent to pay the costs of formal hearing) to specify the amount of costs and to set a timeframe for compliance. Mr. Norris noted the omission of the word “meeting” on line 13 of Finding of Fact 5.¹

¹ The Board also noted that the Appearances section on page 1 of the ALJ’s Decision contained a misspelling of Dr. Kelly’s name, as it is listed as “Charles E. Leyy” on line 10.

1 After hearing the State's argument, discussing the recommended decision and the
2 proposed modifications, the Board voted to: adopt the ALJ's Findings of Fact with the
3 proposed revisions; adopt the Conclusions of Law as written; and to adopt the ALJ's
4 Recommended Order, as modified to specify the costs of formal hearing in the amount of
5 One Thousand Forty-nine and 10/100 Dollars (\$1,049.10), and to specify the costs are to
6 paid within ninety (90) days of the effective date of the Order.

7 Based on the ALJ's Recommended Decision, the administrative record in this
8 matter and modifications adopted by the Board, the Board issues the following Order:

9 **FINDINGS OF FACT**

10 **Background and Procedure**

11 1. The Board is the authority for the regulation and control of the practice of
12 allopathic medicine in the State of Arizona. The mission of the Board is to protect public
13 safety through judicious licensing, regulation, and education of all allopathic physicians.

14 2. Respondent is the holder of License No. 42668 for the practice of allopathic
15 medicine in Arizona. Administrative Notice is taken that Respondent was first issued his
16 license to practice in the State of Arizona on February 08, 2010.² Respondent's license is
17 currently suspended.³

18 3. Over the course of six (6) days between February 29, 2024, and March 28,
19 2024, the Office of Administrative Hearings ("OAH"), an independent state agency,
20 adjudicated Case No. 24A-42688-MDX between the parties, regarding Board Cases MD-
21 20-0379A, MD-20-0897A, MD-22-0326A, MD-22-0708A, MD-22-0896A, and MD-23-
22 0529A.⁴

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25 ² See
<https://azbomv7prod.glsuite.us/glsuiteweb/clients/azbom/Public/Profile.aspx?entID=1713450&licID=597740&licType=1>.

26 ³ *Id.*

⁴ See Public Board Exhibit 1.

1 4. On August 02, 2024, despite Respondent's request for a formal Letter
2 Reprimand with 2-year probationary term and continuing education requirement,⁵ a
3 Recommended ALJ Decision was issued in Case No. 24A-42688-MDX that upheld the
4 Board's underlying Order for Summary Suspension, and also recommended that the
5 Board revoke License No. 42688 for the practice of allopathic medicine in the State of
6 Arizona.⁶

7 5. At its September 04, 2024 meeting, the Board met with Respondent to
8 review the aforementioned Recommended ALJ Decision. Ultimately, the Board voted to
9 modify the Recommended ALJ Decision and issue a Decree of Censure to Respondent,
10 which placed License No. 42688 on a 5-year probationary term in lieu of revocation.⁷

11 6. On September 09, 2024, the Board issued Findings of Fact, Conclusions of
12 Law and Order ("Final Order") to Respondent regarding the aforementioned
13 determination, that included an advisement that Respondent had a right to petition for
14 rehearing or review within 35 days, or the Final Order would become effective after that
15 time.⁸

16 a. As part of the Final Order, Respondent was required to enroll in the
17 Board's Physician Health Program ("PHP") within 5 days of the effective
18 date of the Final Order, and participate in PHP monitoring.⁹

19 7. The Board did not receive a request for rehearing or review from or on
20 behalf of Respondent by October 15, 2024.

21 8. Respondent never enrolled in the PHP as required by the Final Order.

22 9. On or about November 14, 2024, the Board initiated Case No. MD-24-
23 1076A regarding Respondent's failure to timely enroll in the PHP, per its Final Order.

24 _____
25 ⁵ See Public Board Exhibit 16.

26 ⁶ See Public Board Exhibit 1.

⁷ See Public Board Exhibits 2-3.

⁸ See Public Board Exhibit 4.

⁹ *Id.*

Kathryn DesMarais (“Investigator DesMarais”) was assigned by the Board to investigate the confirmable facts underlying the matter.¹⁰

10. On November 20, 2024, the Board issued correspondence to Respondent that advised a meeting would be held November 25, 2024, at 4:00 p.m. to consider Summary Action in Case No. MD-24-1076A under Ariz. Rev. Stat. § 32-1451(D).¹¹

11. On November 21, 2024, Respondent, through his spouse, replied that he was unable to attend on “such short notice,” and argued that the Board could not be rushed to take action against License No. 42668 because he was “not practicing medicine in Arizona or any other state.”¹²

12. On November 25, 2024, the Board met to review Investigator DesMarais’ Investigative Report in Case No. MD-24-1076A.¹³ Ultimately, because Board members agreed that Respondent could not be regulated, which posed a threat to public health, safety, and/or welfare, they unanimously voted to take emergency action and summarily suspend License No. 42668 pursuant to Ariz. Rev. Stat. § 32-1451(D).¹⁴

13. On December 02, 2024, the Board referred this matter to OAH for an evidentiary hearing on January 08, 2025. Per the Complaint and Notice of Hearing (“Complaint”) the issue to be determined was whether the Board had cause to discipline Respondent’s license, up to and including revocation, pursuant to Arizona Revised Statutes (“Ariz. Rev. Stat.”) § 32-1451, based on alleged violations of unprofessional conduct in accordance with Ariz. Rev. Stat. §§ 32-1401(27)(s).

Hearing Evidence

14. The Board called Kathryn DesMarais as a witness. The substantive facts of record are as follows:

¹⁰ See Public Board Exhibit 11.

¹¹ See Public Board Exhibit 14.

¹² See Public Board Exhibit 15.

¹³ See Public Board Exhibit 17.

¹⁴ See Public Board Exhibit 18-19.

- 1 a. On September 10, 2024, Investigator DesMarais inquired with
2 Respondent's attorney ("Counsel") as to whether he has enrolled in the
3 PHP Monitoring Program, as required by the Final Order.¹⁵ On September
4 11, 2024, Counsel informed Investigator DesMarais that Respondent had
5 sold his equipment and shuttered his business. Per Counsel, she was unsure
6 of his plans to comply with the Final Order. On September 25, 2024, and
7 October 08, 2024, Investigator DesMarais reached back out to Counsel to
8 obtain an update, but did not receive a reply.¹⁶
- 9 b. On or about October 17, 2024, Respondent contacted Investigator
10 DesMarais directly to advise that he had closed his local practice and was
11 "looking for a new job."¹⁷ Per Respondent, once he received a "new
12 medical license" in another state he would notify her.¹⁸ Respondent's
13 correspondence did not address PHP enrollment or the Board's Final Order.
- 14 c. On October 21, 2024, Investigator DesMarais forwarded Respondent's
15 email to Counsel and inquired as to whether she was still serving as his
16 legal representative,¹⁹ to which Counsel replied the same date that she was
17 and asked Investigator DesMarais for guidance regarding PHP
18 enrollment.²⁰ On October 22, 2024, Investigator DesMarais replied to
19 advise that Respondent either needed to enroll in his home state's PHP and
20 have them send Arizona quarterly reports, or he needed to complete PHP
21 enrollment in Arizona while he traveled.²¹ Investigator DesMarais also
22 advised Counsel that Respondent had yet to renew License No. 42688 or

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24 ¹⁵ See Public Board Exhibit 5.

¹⁶ *Id.*

25 ¹⁷ See Public Board Exhibit 6.

¹⁸ *Id.*

26 ¹⁹ See Public Board Exhibit 7.

²⁰ *Id.*

²¹ *Id.*

1 tender payment for the civil penalty assessed in Case No. 24A-42688-
2 MDX.²²

3 d. On October 24, 2024, Investigator DesMarais again inquired with Counsel
4 as to whether Respondent enrolled in PHP monitoring, as required by the
5 Final Order.²³

6 e. On October 29, 2024, Investigator DesMarais advised Counsel that
7 Respondent had until the end of the day to enroll in PHP monitoring, or she
8 would have to start the process to issue a practice restriction due to
9 Respondent's non-compliance.²⁴

10 f. On October 30, 2024, the Board's Deputy Director, Raquel Rivera
11 ("Deputy Director Rivera") issued correspondence to Counsel to advise that
12 regardless of Respondent's residency, as long as he maintained an Arizona
13 medical license he would remain under the terms of the Final Order;
14 including PHP enrollment, which became effective October 15, 2024.²⁵
15 Counsel was further advised that if Respondent did not complete PHP by
16 the end of that date, the Board would open a new case for his alleged
17 violation of the Final Order, which would likely impact his ability to
18 become licensed in another state.²⁶ Per Deputy Director Rivera, Respondent
19 could enroll in PHP in Arizona, and then transfer his monitoring to another
20 state post licensure there, or surrender his license until PHP enrollment was
21 confirmed.²⁷

22 ²² *Id.*

23 ²³ *Id.*

24 ²⁴ *Id.*

25 ²⁵ *See* Public Board Exhibit 8.

26 ²⁶ *Id.*

27 ²⁷ *Id.*

- 1 g. On November 01, 2024, the Board issued a Notice Letter to Respondent
2 under Ariz. Rev. Stat. § 32-1401(27)(s) for his failure to comply with the
3 terms of the Final Order.²⁸
- 4 h. On November 07, 2024, the Board offered Respondent an Interim Consent
5 Agreement for Practice Restriction (“Consent Agreement”), which was
6 required to be signed and returned no later than November 11, 2024.²⁹
- 7 i. On November 11, 2024, Counsel advised Investigator DesMarais and
8 Deputy Director Rivera that Respondent would not comply with the
9 “onerous requirements” of the Final Order, and requested a Voluntary
10 Surrender agreement for review.³⁰
- 11 j. On November 12, 2024, Deputy Director Rivera advised Counsel that the
12 Board would draft a Voluntary Surrender agreement for Respondent, but
13 that it would be considered a disciplinary surrender, and that he would still
14 have to sign the Consent Agreement or the Board would take summary
15 action.³¹
- 16 k. On November 13, 2024, Counsel informed Investigator DesMarais that
17 Respondent wished to “fully surrender” his medical license, to which
18 Investigator DesMarais replied that it could not be done until the Board
19 approved it, and that the Board could not do so until its scheduled meeting
20 the following month.³² Counsel advised Investigator DesMarais that
21 Respondent refused to sign the Consent Agreement.³³
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24 ²⁸ See Public Board Exhibit 9.

25 ²⁹ See Public Board Exhibit 10.

26 ³⁰ See Public Board Exhibit 11.

³¹ *Id.*

³² *Id.*

³³ *Id.*

- 1 l. On November 14, 2024, Investigator DesMarais provided Counsel with an
2 Order for Surrender of License and Consent to the Same (“Order for
3 Surrender”) for Respondent.³⁴
- 4 m. On November 15, 2024, Counsel asked Investigator DesMarais if the
5 factual findings in the proposed Order for Surrender could be modified.³⁵
6 On November 18, 2024, Investigator DesMarais asked Counsel for her
7 proposed changes.³⁶
- 8 n. Later on November 18, 2024, Investigator DesMarais received a
9 Withdrawal of Representation notice from Counsel that stated she no longer
10 served as Respondent’s legal representative.³⁷ Investigator DesMarais
11 immediately contacted Respondent to inquire as to whether he had retained
12 new legal counsel, and if he could supply the Board with the factual finding
13 modifications Counsel had previously mentioned he was interested in
14 obtaining from the Board.³⁸
- 15 o. On November 19, 2024, Respondent informed Investigator DesMarais that
16 he had not retained a new attorney for his pending action with the Board,
17 and reiterated that would not sign the Order for Surrender.³⁹
- 18 p. Proposed modifications to the factual findings in the Board’s proposed
19 Order for Surrender were never received by the Board from or on behalf of
20 Respondent.
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24 ³⁴ *Id.*

25 ³⁵ *Id.*

26 ³⁶ *Id.*

³⁷ *See* Public Board Exhibit 12.

³⁸ *See* Public Board Exhibit 13.

³⁹ *Id.*

1 **Additional Evidence**

2 q. On or about December 30, 2024, the Board received the following
3 correspondence from Respondent:⁴⁰

4 I have received a copy of the Complainant and Notice of Hearing. I
5 object to the formal hearing before a judge. I am not represented by
6 a lawyer, as you know, and I do not have the funds to hire one. I
7 choose to have the Board hear the charge against me through a
8 hearing before the Board. In answer to the Complaint, as you know
9 ow, it is my opposition that the board's members and Board staff
10 discriminated against me because of my race and in violation of the
11 laws against disability discrimination. As you know, the action of
12 the Biard made it impossible for me to continue to practice in
13 Arizona, and I offered to surrender my license because of that, but
14 the Board demanded I sign a document admitting I deserved the
15 discipline ordered by the Board, which I could not do. I deny that I
16 refused to sign up for PHP. There is no justification for requiring me
17 to pay the thousands of dollars to be in that program when I am not,
18 will not, be practicing medicine. This new Charge is just more
19 discrimination and retaliation against me for asserting my rights. I
20 assume and expect that you will deliver a copy of this response to
21 the Administrative Law Judge. (*All errors in original.*)

16 **Closing Arguments**

17 15. In closing, the Board argued that although Respondent was represented by
18 an attorney from September 09, 2024, to October 15, 2024, he failed to comply with the
19 Board's Final Order to enroll in a PHP Monitoring Program, and failed to appeal by
20 timely requesting review or rehearing. Though given a second chance by the Board in
21 24A-42688-MDX, Respondent continued to evince his inability or unwillingness to
22 submit to the Board's regulation of his privilege to practice medicine in the State of
23 Arizona. Per the Board, Respondent's refusal to sign the Consent Agreement or Order for
24 Surrender also evinced that he was unsafe to practice, which placed the public at risk in
25 violation of Ariz. Rev. Stat. § 32-1401(27)(s). Thus, the Board beseeched the Tribunal to

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⁴⁰ See Public Board Exhibit 21.

1 affirm the imposed summary suspension and asked that an Order be issued
2 recommending the revocation of Respondent's license. The Board also asked that the
3 Order include a provision assessing Respondent the cost of the formal hearing incurred
4 by the Board pursuant to Ariz. Rev. Stat. § 32-1451(M).

5 **CONCLUSIONS OF LAW**

6 1. The Arizona Legislature created the Board to protect the public and those
7 who deal with its licensed practitioners.⁴¹ The Board has a legitimate interest in
8 protecting the public. The Board is the duly constituted authority for licensing and
9 regulating the practice of allopathic medicine.⁴² Therefore, the Board has jurisdiction
10 over Respondent and the subject matter in this case.⁴³ This matter has been properly
11 brought before OAH for adjudication.⁴⁴

12 2. The Complaint the Board mailed to Respondent's address of record is
13 sufficient, and Respondent is deemed to have received notice of the hearing in this
14 matter.⁴⁵ Because the Board mailed all correspondence to Respondent in the same
15 manner and failed to receive any mail returned as undeliverable, Respondent is deemed to
16 have received all correspondence regarding this matter from the Board as well.

17 3. The Board bears the burden of proof to establish cause to sanction
18 Respondent's license to practice allopathic medicine and factors in aggravation of the
19 penalty by clear and convincing evidence.⁴⁶ Respondent bears the burden to establish
20 affirmative defenses and factors in mitigation of the penalty by the same evidentiary
21 standard.⁴⁷ The standard of proof is by clear and convincing evidence. Clear and
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23 ⁴¹ See Laws 1992, Ch. 316, § 10.

24 ⁴² See *Cohen v. State*, 121 Ariz. 6, 589 P.2d 299 (1978).

24 ⁴³ See Ariz. Rev. Stat. § 32-1401 *et seq*

25 ⁴⁴ See Ariz. Rev. Stat. §§ 32-1101 *et seq.*, 32-1154(A), and 41-1092 *et seq.*

25 ⁴⁵ See Ariz. Rev. Stat. §§ 41-1092.04, 41-1092.05(D), and 41-1061(A).

26 ⁴⁶ See Ariz. Rev. Stat. §§ 41-1092.07(G)(2) and 32-1451.04; Ariz. Admin. Code R2-19-
119(B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁴⁷ See Ariz. Admin. Code R2-19-119(2) and (3).

1 convincing evidence is “[e]vidence indicating that the thing to be proved is highly
2 probable or reasonably certain.”⁴⁸

3 4. Ariz. Rev. Stat. § 32-1451(D) provides that “[i]f the board finds, based on
4 the information it receives under subsections A and B of this section, that the public
5 health, safety or welfare imperatively requires emergency action, and incorporates a
6 finding to that effect in its order, the board may restrict a license or order a summary
7 suspension of a license pending proceedings for revocation or other action. If the board
8 takes action pursuant to this subsection, it shall also serve the licensee with a written
9 notice that states the charges and that the licensee is entitled to a formal hearing before
10 the board or an administrative law judge within sixty days.”

11 5. Ariz. Rev. Stat. § 32-1451(M) provides that “[a]ny doctor of medicine who
12 after a formal hearing is found by the board to be guilty of unprofessional conduct, to be
13 mentally or physically unable safely to engage in the practice of medicine or to be
14 medically incompetent is subject to censure, probation as provided in this section,
15 suspension of license or revocation of license or any combination of these, including a
16 stay of action, and for a period of time or permanently and under conditions as the board
17 deems appropriate for the protection of the public health and safety and just in the
18 circumstance. The board may charge the costs of formal hearings to the licensee who it
19 finds to be in violation of this chapter.”

20 6. Ariz. Rev. Stat. § 32-1451(U) provides, for the purposes of determining the
21 appropriate disciplinary action under this section, that “[t]he board shall consider all
22 previous non-disciplinary and disciplinary actions against a licensee.”

23 7. Ariz. Rev. Stat. § 32-1401(27)(s) defines “unprofessional conduct” to
24 include, “[v]iolating a formal order, probation, consent agreement or stipulation issued or
25 entered into by the board of its executive director.”

26

⁴⁸ Black’s Law Dictionary 596 (8th ed. 1999).

1 8. The issue in this matter was whether Respondent engaged in acts of
2 unprofessional conduct, and if so, whether grounds existed for the Board to discipline
3 Respondent's license based on said conduct.

4 9. The substantive facts in this matter are clear.

5 10. Here, the Board established by clear and convincing evidence that
6 Respondent engaged in unprofessional conduct. Specifically, although it was
7 recommended that Respondent's medical license be revoked, the Board voted instead to
8 issue a Decree of Censure to Respondent, which placed License No. 42688 on a 5-year
9 probationary term whereby Respondent was required to enroll in PHP Monitoring. It is
10 also clear from the record that Respondent never appealed the Final Order or complied.

11 11. Therefore, the sole remaining issue to be addressed was whether
12 Respondent established one or more affirmative defenses or mitigating factors, and if so,
13 whether those defenses or mitigating factors preclude the Board from disciplining
14 Respondent's license.

15 12. While Respondent had no obligation to testify, he did not present any
16 evidence sufficient to overcome the credible evidence submitted by the Board. Nor was
17 Respondent able to successfully rebut or refute any of the evidence in aggravation
18 presented by the Board against him. Notably, though Respondent vehemently argued in
19 his December 30, 2024, reply to the Complaint that he had been discriminated against
20 and that his rights had been violated by the Board wherein he, he offered no authority by
21 which one or more instances could be substantiated as such. What the record reflects, is
22 that Respondent was not entitled to more notice than was provided or any special
23 accommodations beyond the grace that had already been extended by the Board.⁴⁹

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26 ⁴⁹ See *Comeau v. Ariz. State Bd. of Dental Exam'rs*, 196 Ariz. 102, 993 P.2d 1066 (App. 1999);
see also *Wassef v. Ariz. State Bd. of Dental Exam'rs*, 242 Ariz. 90, 393 P.3d 151 (App. 2017).

1 Additionally, Respondent could not “waive” an administrative hearing in favor of having
2 the Board adjudicate the current action.

3 13. A license to practice medicine is an esteemed privilege, not an inherent
4 property right. The primary duties of a licensed physician included to ensure that they are
5 safe to practice and to work with the Board to ensure their welfare and that of their
6 patients. To effectuate appropriate regulatory compliance, physicians must communicate
7 clearly, accurately, and professionally with Board staff. It is clear from a review of the
8 evidentiary record in this matter that Respondent repeatedly failed to meet these
9 rudimentary standards to practice medicine.

10 14. In the case at bar, the Tribunal finds that Respondent’s conduct established
11 that he cannot, and does not want to be, regulated by the Board at this time.

12 15. Based on the credible evidenced of record, the undersigned Administrative
13 Law Judge must conclude that the Board’s allegations of unprofessional conduct pursuant
14 to ARIZ. REV. STAT. § 32-1401(27)(s) against Respondent have been established.
15 Ground exist for the Board to impose a disciplinary sanction against Respondent’s license
16 to practice allopathic medicine in the State of Arizona.

17 **ORDER**

18 Based on the foregoing,

19 **IT IS ORDERED** that the Board’s November 25, 2024, Order For Summary
20 Suspension Of License against Respondent’s License No. 42668 be AFFIRMED.

21 **IT IS FURTHER ORDERED** that Respondent’s License No. 42668 for the
22 practice of allopathic medicine in the State of Arizona be REVOKED.

23 **IT IS FURTHER ORDERED** that Respondent be assessed the cost(s) of formal
24 hearing incurred by the Board in this matter per Ariz. Rev. Stat. § 32-1451(M). Dr. Kelly
25 shall pay the Board One Thousand Forty-nine and 10/100 Dollars \$1,049.10 by certified
26 funds, within 90 days of the effective date of this Order.

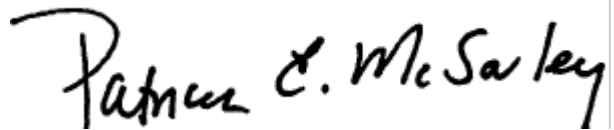
1 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

2 Respondent is hereby notified that he has the right to petition for a rehearing or
3 review. The petition for rehearing or review must be filed with the Board's Executive
4 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The
5 petition for rehearing or review must set forth legally sufficient reasons for granting a
6 rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days
7 after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not
8 filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to
9 Respondent.

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

12
13 DATED this 7th day of March 2025.

14 THE ARIZONA MEDICAL BOARD

15
16 

17 By _____
18 Patricia E. McSorley
19 Executive Director

20 ORIGINAL of the foregoing filed this
21 7th day of March, 2025 with:

22 Arizona Medical Board
23 1740 W. Adams, Suite 4000
24 Phoenix, Arizona 85007

25 COPY of the foregoing filed
26 this 7th day of March, 2025 with:

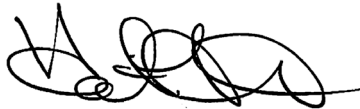
 Tammy L. Eigenheer, Acting Director
 Office of Administrative Hearings
 1740 W. Adams

1 Phoenix, AZ 85007

2 Executed copy of the foregoing
3 mailed by U.S. Mail and emailed
4 this 7th day of March, 2025 to:

5 Charles E. Kelly, M.D.
6 Respondent
7 Address of Record

8 Seth T. Hargraves
9 Assistant Attorney General
10 Office of the Attorney General
11 2005 N. Central Avenue – SGD/LES
12 Phoenix, AZ 85004
13 LicensingEnforcement@azag.gov



14 By:
15 Arizona Medical Board