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BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of:

WINSTON R. HEWITT, M.D.

Holder of License No. 44341 For the Practice of Allopathic Medicine In the State of Arizona Board Case No. MD-21-1151A OAH Case No. 24A-44341-MDX

ORDER DENYING REQUEST FOR REHEARING OR REVIEW

At its public meeting on June 5, 2024 the Arizona Medical Board ("Board") considered WINSTON R. HEWITT, M.D.'s ("Respondent") Request for Rehearing or Review of the Board's Order dated April 5, 2024 in the above referenced matter. Respondent was present and participated without being represented by counsel. The State was represented by Assistant Attorney General Elizabeth Campbell. The Board had available Assistant Attorney General Ben Norris for independent legal advice. After considering all of the evidence, the Board voted 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 April 5, 2024 Findings of Fact, Conclusions of Law and Order for Letter of Reprimand in Board Case MD-21-1151A/OAH Case No. 24A-44341-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, and article 6 of the Arizona Revised Statutes.

DATED AND EFFECTIVE this 19th day of June, 2024.

ARIZONA MEDICAL BOARD

J. We Sa ley **Executive Director**

EXECUTED COPY of the foregoing mailed this 19th day of June, 2024 to:

WINSTON R. HEWITT, M.D. Address of Record

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

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BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

Case No.24A-44341-MDX

WINSTON R. HEWITT, M.D.,

Holder of License No. 44341 For the Practice of Allopathic Medicine In the State of Arizona. FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On April 5, 2024, this matter came before the Arizona Medical Board ("Board") for consideration of Administrative Law Judge ("ALJ") Velva Moses-Thompson's proposed Findings of Fact, Conclusions of Law and Recommended Order with regarding to Winston R. Hewitt, M.D., ("Respondent"). Assistant Attorney General Elizabeth A. Campbell represented the State. Assistant Attorney General Diane DeDea 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 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 number 44341 for the practice of allopathic medicine in the State of Arizona.
- 3. The Board initiated case number MD-21-1151A after receiving notification from the a Mayo Clinic Hospital where Dr. Hewitt held privileges that he had been issued a Final Written Warning by the Hospital following an investigation regarding Dr. Hewitt's absence during a kidney transplant procedure for which Dr. Hewitt was designated as the attending surgeon.

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- 4. On October 2, 2021, Dr. Hewitt was the attending surgeon for a kidney transplant performed on Patient FM. Although Dr. Hewitt was aware of the surgery, he was not in attendance during the surgery, which was performed by a fellow.
- 5. On October 2, 2021, Dr. Hewitt was the surgeon who accepted a donor liver and was expected to be the attending surgeon for Patient FT's transplant procedure. Dr. Hewitt did not respond to repeated attempts to contact him by hospital personnel for a period of approximately 2 hours. Dr. Hewitt's lack of response resulted in another physician initiating the procedure. Dr. Hewitt arrived approximately 45 minutes after the procedure was started.
- 6. As the attending surgeon, the standard of care required that Dr. Hewitt be physically present during critical or key portions of Patient FM's kidney transplant surgery. Dr. Hewitt deviated from the standard of care because he was not present during the transplant surgery. There was the potential for patient harm in that fellows are learners and need supervision, including guidance and instruction, in the event that unexpected issues arise during the transplant.
- 7. It is standard of care for the attending surgeon who accepted the organ to be present and available for the transplant, especially when Dr. Hewitt had committed to being the attending surgeon for FT's liver transplant. Dr. Hewitt deviated from the standard of care because hospital personnel were unable to reach him in the hours leading up to FT's transplant surgery, which started without Dr. Hewitt.
- 8. There was the potential for harm because Dr. Hewitt's lack of communication and responsiveness created the potential for delay in transplanting the organ, a potential delay for the patient/family, and the multiple attempts to reach Dr. Hewitt by multiple members of hospital staff diverted staff attention from core tasks, which could have negatively impacted patient care.

- 9. On December 21, 2023, the Board issued a Complaint and Notice of Hearing setting the above-entitled matter for hearing on February 5, 2024 at the Office of Administrative Hearings.
 - 10. A hearing was held on February 5, 2024.
 - 11. Dr. Hewitt did not appear for hearing.
- 12. At hearing, the Board presented the testimony of Joseph McClain, Chief Medical Consultant for the Board, and Renee Dittloff, the Board's Medical Investigator.

CONCLUSIONS OF LAW

- 1. The Board has jurisdiction over Dr. Hewitt and the subject matter in this case under Arizona Revised Statutes § 32-3202.
- 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 Arizona Board established by clear and convincing evidence that Dr. Hewitt engaged in unprofessional conduct, in violation of A.R.S. § 32-1401(27)(r) and (jj), based on the conduct described in Findings of Facts 1 through 10.
- 4. Because Dr. Hewitt has committed acts of unprofessional conduct, the Arizona Board has authority to discipline his license. A.R.S. § 32-1451(M).
- 5. Given Dr. Hewitt's behavior and his failure to appear at the duly noticed hearing, the Administrative Law Judge concludes that the Board should issue a Letter of Reprimand to Dr. Hewitt.

ORDER

Based on the foregoing, **IT IS ORDERED** that the Board issue a Letter of Reprimand to Winston R. Hewitt, MD, holder of License No. 44341.

IT IS FURTHER ORDERED that, pursuant to A.R.S. § 32-1451(M),¹ Winston R. Hewitt, M.D. be charged \$578.69 for the cost of the formal hearing. Dr. Hewitt shall pay the Board \$578.69 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 5 day of April 2024.

THE ARIZONA MEDICAL BOARD

Patricia E. McSorley Executive Director

¹ A.R.S. § 32-1451(M) provides, in pertinent part, as follows: "The board may charge the costs of formal hearings to the licensee who it finds to be in violation of this chapter"

1	day of April, 2024 with:
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3	Arizona Medical Board 1740 W. Adams, Suite 4000
4	Phoenix, Arizona 85007
5	COPY of the foregoing filed this 5th day of April 2024 with:
6	Greg Hanchett, Director
7	Office of Administrative Hearings 1740 W. Adams Phoenix, AZ 85007
8	
9	Executed copy of the foregoing
10	mailed by U.S. Mail and emailed this day of April 2024 to:
11	 Winston R. Hewitt, M.D.
12	Address of Record
13	Elizabeth A. Campbell
14	Assistant Attorney General
15	Office of the Attorney General SGD/LES
16	2005 N. Central Avenue Phoenix, AZ 85004
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18	By: Michelle Robles
19	Arizona Medical Board
20	# 12004028
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