BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL BY THE ALASKA STATE MEDICAL BOARD

In the Matter of	)	
	)	
MAHMOOD AHMAD	)	OAH No. 22-0726-MED
	)	Agency No. 2022-000787

DECISION

I. Introduction

This case concerns a new license application by a physician who surrendered his Alaska medical license in 2016 to resolve a disciplinary proceeding.

During 2015-2016, Dr. Mahmood Ahmad operated a pain clinic in Anchorage. He liberally prescribed high doses of opioids, routinely in combination with high-dose benzodiazepines, to a large volume of patients. The Division of Corporations, Business and Professional Licensing sought summary suspension and revocation of Dr. Ahmad's Alaska medical license on the basis that his prescribing practices threatened public health and safety, violated the standard of care, and demonstrated unfitness to practice medicine. After a hearing on whether his prescribing practices constituted a "clear and immediate danger to public health and safety," the State Medical Board upheld the summary suspension of Dr. Ahmad's license in August 2016. Dr. Ahmad then voluntarily surrendered his Alaska medical license. Accordingly, no hearing was held on the broader issue of revocation or other discipline.

In 2021, Dr. Ahmad applied for a new Alaska medical license. The Board denied his application, and he requested a hearing to challenge that denial. In proceedings before the Office of Administrative Hearings, both Dr. Ahmad and the Division have presented evidence and argument regarding whether the Board has discretion to grant the license under any circumstances and, if so, whether it should do so.

This decision concludes that Dr. Ahmad is not eligible for a return to licensure because his voluntary surrender of his license resulted in the dropping of the civil charges filed against him by the Division. This is a procedural history that, by law, creates a permanent bar to a new license. Even if that fact did not create a statutory prohibition against his return to licensure, Dr. Ahmad has not proved that he meets the qualifications for licensure at this time. The evidence of his improper controlled substance prescribing practices in 2015-16 demonstrated an absence of professional judgment required for safe and effective practice. While Dr. Ahmad has presented evidence that he is currently practicing maritime medicine (under a foreign license) without incident, he has not demonstrated that he understands the nature, scope, and significance of his

past violations. This gives rise to significant ongoing concerns about his professional judgment. Accordingly, and as explained below, the denial of Dr. Ahmad's application for licensure is affirmed.

II. Facts

While a number of events have made this case procedurally complicated, the underlying facts and ultimate analysis are not overly complex, as the outcome here will follow a precedent adopted by the Board in 2010, *In re Ilardi*.[1] For this reason, the facts will be presented here in a fairly summary format. For a reader who would like more detail or to fully understand the extensive evidence that supports a finding that Dr. Ahmad's previous practice in Alaska reflected significantly impaired professional judgment, the Board's 2016 decision on summary suspension is attached as an appendix.[2]

A. Summary of Facts

1. Background

Dr. Ahmad graduated from medical school in Pakistan in 1987 and was licensed to practice medicine in Pakistan. He came to the United States in 1993 to complete his residency in anesthesiology and a fellowship in pain medicine from Yale University. He was licensed to practice medicine in Arkansas in 1998. He practiced anesthesiology in Arkansas, served as faculty for the University of Arkansas for Medical Services, practiced and received training in Australia, served as chief of anesthesia in a hospital and medical center, and established a pain practice in Arkansas in 2004.[3]

In 2013 the Arkansas Medical Board undertook disciplinary proceedings against Dr. Ahmad, relating to his "prescribing Schedule medication for pain not associated with malignancy or terminal illness for more than 6 months and without keeping proper records and monitoring

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[1] OAH No. 10-0114-MED (Alaska St. Med. Bd. 2010), https://aws.state.ak.us/OAH/Decision/Display?rec=3393.

[2] OAH No. 16-0514-MED (Alaska St. Med. Bd. 2016), https://aws.state.ak.us/OAH/Decision/Display?rec=3403. and attached as appendix I ("2016 Decision"). To be clear, the 2016 Decision is not "incorporated by reference" because that would mean that everything stated in the earlier decision is restated here, and there are some aspects of the 2016 Decision that, while relevant in an historical sense, are not an actual part of the foundation of this decision. The facts found in the 2016 Decision, and the conclusions it reached regarding Dr. Ahmad's judgment and violation of the standard of care, however, are the foundation of this decision. The legal basis for this reliance on the 2016 Decision is explained in detail in the discussion section of this decision. For now, we merely note that the approach taken here will provide an outline of facts while omitting detail, but will make that detail available to the curious reader.

[3] DIV 4, 622, 1144; Ahmad Ex. 1 at 2; Division Brief at 1.

the condition of his patients to justify the ongoing prescribing of the Schedule medication."[4] The matter was resolved with the payment of a fine and requirement of continuing education.[5]

2. Dr. Ahmad's medical practice in Alaska

Dr. Ahmad obtained his license to practice medicine in Alaska in 2013.[6] He did not practice in Alaska until 2015, when he opened a pain management clinic on Lake Otis Parkway in Anchorage. His business plan was to operate for one three-day weekend per month, hoping later to expand to one week per month. After a slow start – seeing just three patients in March and four in April -- by fall 2015 business began picking up and then snowballed.[7] He saw 54 patients in September 2015, 76 in October 2015, 124 in November 2015, and 179 in December 2015. Still holding clinic hours just one three-day weekend per month, Dr. Ahmad accommodated this volume by scheduling appointments in 15-minute increments from 7:00 a.m. to 8:30 p.m.[8]

Evidence about Dr. Ahmad's patient intake and screening processes raised serious concerns about the quality, rigor, and safety of his intake and screening procedures. Despite functioning solely as a specialist "pain management" clinic, Dr. Ahmad did not obtain patient records from other providers, nor did he conduct or obtain imaging studies. He entered detailed diagnoses into his patients' medical records, but with no supporting detail or apparent factual basis beyond patient self-reports.[9] Dr. Ahmad also did not access the Alaska Prescription Drug Monitoring Program, which would have provided him with information on patients' past and current drug regimens. While his intake questionnaire asked about substance abuse and mental health, it did not employ validated screening tools or inquire into treatment, and he appeared to dispense controlled substances without regard to the information patients provided.[10]

More broadly, Dr. Ahmad's description of the level of detail of his patient evaluations was inconsistent with the record evidence of the number of daily appointments he had – up to 54 in a single day.[11] His electronic patient records, in turn, were similar, frequently identical, revealing little to no individualized assessment.[12]

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4 DIV 3 (quoting Arkansas State Medical Board report), 10-11.
5 *Id.*, Ahmad Ex. 5.
6 2016 Decision at 4.
7 *Id*.
8 *Id.*
9 *Id.* at 29.
10 *Id.* at 12-15.
11 *Id.* at 16-18.
12 *Id.* at 17-18.

Against this backdrop, Dr. Ahmad engaged in high-volume, high-dose controlled substance prescribing. During a five-month period in which he saw patients just three days per month, Dr. Ahmad wrote more than 700 controlled substance prescriptions.[13] Patients were routinely given high dosage (15-30 mg) Oxycodone, high dosage (10-20 mg) methadone, and valium. This included patients who were not currently taking pain medication ("opioid naïve" patients) and patients who were reporting relatively low levels of pain. No records indicated that Dr. Ahmad instructed the patients to titrate the medications so they could safely introduce them to their systems. No records indicate that Dr. Ahmad considered or employed other approaches to pain management.[14]

3. Complaints and Summary Suspension

Beginning in November 2015, 10 different pharmacists in southcentral Alaska reported concerns about Dr. Ahmad's prescribing of opioids to the Division of Corporations, Business and Professional Licensing. The pharmacists described new patients without a documented history of prior opioid prescriptions being given prescriptions for multiple high-dose controlled substances. Some prescriptions were above the dosage level stocked by the pharmacy. Given the red flags with so many high-dose prescriptions all at once, at least two pharmacists refused to fill them.[15]

Following an investigation, the Division petitioned the Board to summarily suspend Dr. Ahmad's physician's license, asserting that his opioid prescribing practices were dangerously outside the standard of care.[16] The Board granted the petition, summarily suspending Dr. Ahmad's Alaska medical license in May 2016.[17]

4. Summary Suspension Hearing and License Surrender

Dr. Ahmad requested a hearing to appeal the summary suspension. The Office of Administrative Hearings conducted a four-day hearing, at which Dr. Ahmad was represented by counsel, testified, and presented expert testimony. A proposed decision issued on June 27, 2016 recommended affirmance of the summary suspension. On August 4, 2016, the Board adopted that decision, finding that "Dr. Ahmad had demonstrated professional incompetence, gross

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13 *Id.* at 16 (October 2015: 76 patients, 175 separate controlled substance prescriptions; November 2015: 124 patients, 229 controlled substance prescriptions; December 2015: 179 patients, 166 controlled substance prescriptions).

14 *Id.* at 16, 18-20

15 *Id.* at 8-9.

16 DIV 4, 619-20.

17 DIV 618.

negligence, or repeated negligent conduct, and engaged in unprofessional conduct by overprescribing high dose opioids."[18] Concluding that "Dr. Ahmad's opioid prescribing practices constitute a clear and immediate danger to the public health and safety," the Board affirmed the suspension of his license pending disciplinary proceedings on whether his license should be revoked.[19]

During the summer of 2016, the parties were preparing for a further hearing on the issue of revocation. They were also negotiating a possible resolution of the dispute. On August 5, 2016, just after the Board's final decision on summary suspension, Dr. Ahmad signed a voluntary Surrender of Physician License. That agreement acknowledged that "the Division of Corporations, Business and Professional Licensing is conducting an active investigation," and provided that "[t]his license surrender, which follows the Board's adoption of the Decision on Summary Suspension, concludes the investigation and administrative hearing without final Board action on the accusation in OAH No. 16-0514-MED."

Notably, the agreement included an explicit acknowledgment that Dr. Ahmad could not return to practice:

> I understand that I cannot and will not practice as a Physician in the State of Alaska. Because this surrender has resulted in the dropping of civil charges under AS 08.64.334, my license cannot be returned.[20]

On August 24, 2016, the Board accepted Dr. Ahmad's Surrender of Physician License "in lieu of potential revocation of licensure for professional incompetence, gross negligence, repeated negligent conduct, and unprofessional conduct."[21]

5. Licensing actions in other jurisdictions

As the Division notes, there is an additional relevant set of facts relating to licensing actions in other jurisdictions and Dr. Ahmad's reporting of those actions. (These facts are grouped together and reported separately to avoid detracting focus from the main issue here — Dr. Ahmad's 2015-16 prescription practices). Very briefly, these facts are as follows.

Dr. Ahmad had failed to disclose earlier 2013 Arkansas disciplinary proceedings on his initial license application in Alaska, an omission for which he was disciplined and agreed to a

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18 2016 Decision at 26 (bolding and internal quotation marks omitted).

19 *Id.* at 34, 36.

20 DIV 697.

21 DIV 696 (describing "practices that included overprescribing high dose opioids, failing to provide adequate patient assessment and obtain patient background information, failing to provide sufficient monitoring of patients after initiating high dose prescriptions, and failing to maintain complete patient records").

2013 consent decree.[22] Based on the 2016 Alaska action, the Arkansas Board revoked Dr. Ahmad's license in October 2016.[23]

Dr. Ahmad did not disclose either the 2013 Arkansas discipline or the 2013 Alaska consent decree on his 2021 application for licensure in Alaska. He did, however, disclose the 2016 Arkansas actions against his license.[24]

In 2017 the Medical Board of Australia suspended Dr. Ahmad's Australia license based on the Alaska Board's 2016 action. After that suspension was affirmed on appeal, Dr. Ahmad applied for a renewal of his Australian license which the Medical Board of Australia denied in 2019. Dr. Ahmad disclosed "[t]he suspension of registration in Australia" in his 2021 Alaska application, describing: "Australian suspension was lifted but subsequent renewal of registration was refused."[25]

Dr. Ahmad appealed the Australian Board's 2019 denial of his registration renewal. That denial was affirmed in June 2023 based on the tribunal's conclusion that Dr. Ahmad's conduct giving rise to the 2016 Alaska suspension "indicated a lack of sound professional judgment and a reckless practice of medicine," and based on concerns that Dr. Ahmad "continues to demonstrate a lack of insight into the professional failings shown in his prescription of controlled substances, and to show a lack of candor."[26]

6. 2021 criminal charges

On May 7, 2021, criminal charges against Dr. Ahmad were filed in Alaska, alleging more than a dozen felonies relating to his prescriptive practices during the time his clinic operated in Alaska. A warrant was issued for his arrest.[27] By this time, however, Dr. Ahmad was living outside of the United States. Dr. Ahmad contends, and this decision accepts, that he was unaware of the criminal charges against him until learning of them through proceedings in this licensing action. He has generally kept this tribunal informed of his filings in the criminal case.

As of the date of this proposed decision, it appears that a bench warrant remains outstanding.

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22 DIV 1-3; 144; 645.

23 DIV 1643-44. That decision was upheld on appeal. DIV 1646. The Arkansas Board has since rejected applications for relicensure by Dr. Ahmad in 2018 and 2020.

24 DIV 1154-1155.

25 DIV 1148.

26 *Ahmad v. Medical Board of Australia* (Review & Regulation) [2023] VCAT (Victorian Civil and Administrative Tribunal) 680, 3-4, https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2023/680.html. Both parties have cited the 2023 Australia Administrative Tribunal in their briefs in this action.

27 3AN-21-03327CR; *see also* Division's Motion for Summary Adjudication at Ex. 7.

7. Medical practice from 2021 to the present

Dr. Ahmad remains licensed in Pakistan, and in October 2021 he began working as a doctor on cruise ships.[28] He first worked under other doctors who served as the ship's chief doctor, and then became chief doctor himself and supervised other doctors.[29] He has held chief doctor positions since September 2022.

His shipboard practice has covered a wide array of acute care cases (orthopedic injuries, gastroenteritis, lacerations, cardiac and pulmonary issues, psychiatric emergencies, anaphylaxis), as well as managing medical care for crew and guests on board during the COVID pandemic.[30] A former supervising doctor observed that he "adapted very quickly to all aspects unique to the wide scope of practice in Marine Medicine," and characterized his patient care as "competently and compassionately doing whatever is possible for them."[31] Another colleague praised Dr. Ahmad's "exceptional skills and expertise" in the chief doctor role, citing as "truly admirable" his "ability to remain calm under pressure, make quick and accurate decisions, and effectively communicate with patients, staff, and other healthcare professionals."[32] Another, who described several life-saving cardiac procedures he and Dr. Ahmad have performed while onboard, praised Dr. Ahmad's "exceptional skills in efficiently handling emergencies and providing critical care," "his calm demeanor and ability to act swiftly when faced with life-threatening situations," and his "expertise and unwavering commitment to delivering exceptional care onboard."[33]

B. October 2021 Application and Board's August 2022 denial

In October 2021, more than five years after surrendering his Alaska license, Dr. Ahmad submitted an initial application for an Alaska physician's license.[34] In a January 2022 letter to the Board in support of his application, Dr. Ahmad explained that he was "seeking a path for return to medical practice," and entreated, "I only ask that you be open to the idea that I one day might return to practice."[35]

The Board denied Dr. Ahmad's license application in August 2022, citing:

> [C]ontinued concerns about your ability to provide safe care to Alaskan patients based on the substantiated findings that led to the suspension of your license in 2016.

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28 DIV 1158.
29 *See* Ahmad Exs. 1-6.
30 Ahmad Ex. 1, pp. 3-22, 29, 36; Ex. 4, p. 47-71. (Dr. Ahmad's exhibits are numbered consecutively, meaning that all exhibits after Exhibit 1 do not start at page 1)
31 Ahmad Ex. 1, p. 3.
32 Ahmad Ex. 1, p. 29 (Letter of Dr. Steven V. Cordovano, D.O.).
33 Ahmad Ex. 1, p. 29 (Letter of Dr. Arun B. Matthew).
34 DIV 1150-1163.
35 Ahmad Ex. 1.

> These findings include that you prescribed high doses of opioids and other controlled substance to patients without demonstrating medical necessity, without reviewing records and diagnostic tests, without taking into account individual risk, without close monitoring of adverse effects, and without due regard to the health of patients.[36]

An October 2022 Amended Statement of Issues set out the grounds for the denial that are at issue in this hearing. In addition to citing the findings in Dr. Ahmad's previous case, the Amended Statement of Issues cites as additional grounds for denial: "your surrender of license resulted in the dropping of civil charges in OAH Case No. 16-0514-MED, your license to practice medicine in Arkansas is currently revoked for an alleged violation, and you submitted false information on your application."[37]

C. Procedural History

Dr. Ahmad requested a hearing to contest the denial of his 2021 application, and in August 2022 the matter was referred to the Office of Administrative Hearings. In October 2022 the Division filed a motion for summary adjudication, which was denied.[38]

To accommodate Dr. Ahmad's current work schedule and living situation (on a ship in the Mediterranean) the parties agreed to delays in the prehearing process. Further delay, including entry of a temporary stay of proceedings, was permitted to allow Dr. Ahmad to address the criminal matter.

Eventually, the parties agreed that the hearing process could take place by written submissions alone. Both parties submitted briefs and both supplemented the record during the briefing process, which concluded in early 2024. This decision follows.

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[36] DIV 2736-37.

[37] Amended Statement of Issues at 1 (Oct. 26, 2022).

[38] The motion set out three grounds for denying Dr. Ahmad's license application without further process. First, the Division argued that Dr. Ahmad could not be licensed under AS 08.64.334 because his voluntary surrender had resulted in the dropping of the action to revoke his license. That motion was denied because of concern about possible ambiguity in AS 08.64.334 (as will be explained, after further analysis, this decision holds that AS 08.64.334 is not ambiguous). Second, the Division asserted that under AS 08.64.200(a)(4) Dr. Ahmad is ineligible for a license because Arkansas revoked his license for disciplinary reasons. That motion was denied because the Arkansas action was based solely on the Alaska proceedings, meaning that "[t]o now conclude that a new Alaska license could never be granted until the Arkansas license is restored would set in motion a Kafkaesque process whereby no state can take action until a second state takes action, which it cannot do because the first state has taken no action." Although the order on summary adjudication noted that further in-depth analysis was needed before a firm conclusion on the Division's theory could be reached, the denial on this ground will not be revisited in this decision because it is not necessary to reach those issues. Third, the Division asserted that Dr. Ahmad made material false statements on his 2021 application. That motion was denied because it was not based on undisputed facts and because, even if true, it did not identify an *automatic* ground for denial of a license application.

III. Discussion

A. Applicable law

Physician license applications generally are governed by AS 08.64.170-255. In addition to setting out the various requirements for licensure, the Board's statutes provide, at AS 08.64.240, specific grounds for denial of a license. Some of these are mandatory grounds: the Board may not grant a license to an applicant who fails or cheats during the examination, for example.[39] The Board also may not grant a license to an applicant who surrendered a license in another jurisdiction while under investigation and has not obtained reinstatement of that license, or to an applicant the Board determines to be "professionally unfit to practice medicine [in] the state."[40] In addition to these mandatory grounds to refuse to grant a license, the Board also has *discretion* to "refuse to grant a license to any applicant for the same reasons that it may impose disciplinary sanctions under AS 08.64.326."[41]

In addition to these provisions applicable to all applications, in this case another statute also applies. As noted, the voluntary surrender agreement Dr. Ahmad signed in 2016 included an explicit acknowledgment that he could not return to practice:

> I understand that I cannot and will not practice as a Physician in the State of Alaska. Because this surrender has resulted in the dropping of civil charges under AS 08.64.334, my license cannot be returned.[42]

The statute cited in the agreement, AS 08.64.334, "Voluntary surrender," provides as follows:

> The board, at its discretion, may accept the voluntary surrender of a license. A license may not be returned unless the board determines, under regulations adopted by it, that the licensee is competent to resume practice. However, a license may not be returned to the licensee if the voluntary surrender resulted in the dropping or suspension of civil or criminal charges against the physician.

Thus the statute tells us three things. First, the Board has discretion to accept a voluntary surrender, as occurred here. Second, there are requirements – a board determination of competency to resume practice – that attach to the return of any surrendered license. Lastly, "however," a license surrender for purposes of avoiding civil or criminal charges is not eligible to be "returned."

A threshold question, then, is whether Dr. Ahmad's 2021 license application is governed by AS 08.64.334. If so, we must determine whether that statute creates an absolute bar to

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39 AS 08.64.240(a)(1).
40 AS 08.64.240(a)(2); (a)(3).
41 AS 08.64.240(b).
42 DIV 697.

relicensure. If the statute applies but there is no absolute bar, the Board must still determine if Dr. Ahmad "is competent to resume practice." And lastly, even if the statute did not apply at all, the Board would need to determine whether Dr. Ahmad was professionally fit to practice and otherwise met the requirements for licensure, including an absence of the disqualifying circumstances identified in AS 08.64.240(a).

As explained in the following discussion, the Board's 2010 decision in *In re Ilardi* provides a roadmap for this analysis.[43] Dr. Ilardi was a psychiatrist who was licensed to practice medicine in Alaska in 1989. In 2006, the Division filed an accusation against Dr. Ilardi, alleging that he had engaged in prohibited sexual contact with two victims, and requesting his license be revoked. Dr. Ilardi contested the revocation and requested a hearing. After the hearing convened and some testimony was taken, Dr. Ilardi announced that he was voluntarily surrendering his license. Accordingly, the hearing was never completed and no written decision was issued.

In 2010, Dr. Ilardi applied for a new Alaska license. The Board denied the application, and upheld the denial after a hearing. The Board gave three reasons for its denial. First, it concluded that the provision in AS 08.64.334 that "a license may not be returned to the licensee if the voluntary surrender resulted in the dropping or suspension of civil or criminal charges against the physician" was an absolute bar to relicensure. In the alternative, the Board found that Dr. Ilardi's ongoing lack of professional judgment rendered him not "competent" for licensure, and finally that the evidence of his significant disciplinary violations warranted an exercise of its discretionary authority to deny his application.

B. Whether AS 08.64.334 is a complete bar to relicensure

In *Ilardi,* the Board found that AS 08.64.334 was a bar to giving Dr. Ilardi a new license because his voluntary surrender in 2006 had resulted in the dropping of the licensing accusation then pending against him. The Board concluded this was a rational result because it prevented a licensee from sidestepping a timely evidentiary hearing (when the evidence was fresh and the Division prepared), only to argue years later, when memories had faded, that the facts had not been as alleged.[44]

Certainly, with regard to the application of AS 08.64.334 to Dr. Ahmad, he is in the same shoes as Dr. Ilardi. He voluntarily surrendered his license, which resulted in the dropping of the

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[43] OAH No. 10-0114-MED (Alaska St. Med. Bd. 2010).
[44] OAH No. 10-0114-MED at 6.

disciplinary accusation against him. Under the interpretation set out in *Ilardi,* AS 08.64.334 precludes the Board from granting him a new license to practice medicine Alaska.

Dr. Ahmad advances various arguments in support of the premise that AS 08.64.334 "does not impose an **absolute** bar on reinstatement but establishes conditions under which reinstatement may be granted."[45] Noting that the phrase "may not be returned to the licensee" includes the term "may," he asserts that the use of this typically permissive word implies that the Board has discretion to either return or not return the license. He cites to other statutes that allow reinstatement or relicensure for a licensee whose license was revoked, and asserts that if a revoked license can be returned then it follows that "a voluntarily surrendered license (accepted in lieu of a 'potential' revocation) may also be reinstated."[46] He argues that "[d]enying a license reinstatement based solely on [his] prior voluntary surrender would violate due process rights" and that it would be "arbitrary and capricious" to not consider his "rehabilitation efforts."[47] He concludes that reinstating his voluntarily surrendered license would comport with due process, legislative history, and the Board's mission by allowing him to serve the public.[48]

Dr. Ahmad's arguments that a permanent prohibition on licensure should be given close scrutiny are well taken. Courts are wary of outright bans that have the effect of limiting the members of a profession. Indeed, in a 2008 case, when the Board interpreted its regulations to create a permanent ban on relicensure of one doctor who had voluntarily surrendered his license, a superior court overruled the Board's interpretation, noting, at least for that case, that "the limitations on reinstatement of the voluntarily surrendered license should not be more onerous than reinstatement of a revoked license."[49]

Because of these concerns, in this matter, the Administrative Law Judge declined to grant summary adjudication on AS 08.64.334's permanent prohibition on reinstatement of voluntarily surrendered license that resulted in charges being dropped.[50] The better approach here was to

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45 Ahmad Opening Brief at 3 (emphasis in original).

46 *Id.* (emphasis deleted).

47 *Id.* at 6.

48 *Id.*

49 *Beirne v. State, Alaska Medical Board,* 3AN-07-11710CI (Alaska Superior Ct., Nov. 20, 2008) at transcript page 20; https://aws.state.ak.us/OAH/Decision/Display?rec=3384.

50 Summary adjudication is allowed when the material facts are undisputed and a decision is appropriate under the law. It often means that the proceedings can be shortened. *See Church v. State, Dep't of Revenue*, 973 P.2d 1125, 1129-1130 (Alaska 1999); *Human Resources Co. v. Alaska Comm'n on Post–Secondary Educ*., 946 P.2d 441, 445 n. 7 (Alaska 1997); *Douglas v. State, Dep't of Revenue*, 880 P.2d 113, 117 (Alaska 1994); *Smith v. State, Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990).

allow the parties to create a record and flesh out their arguments before ruling on whether to follow AS 08.64.334 and *Ilardi.*[51]

After further review, however, this decision concludes that AS 08.64.334 means what it says, and that there is no reason to disturb Board precedent. Here we have a statute (not a regulation, as in the 2008 case) that gives rise to the permanent ban on relicensure. This ban does not impinge on an existing licensee's due process rights—the licensee who has been accused of wrongdoing has options other than the surrender of the license. Namely, the licensee has a right to a full hearing by an impartial decisionmaker before being deprived of the licensee's property interest in the license.[52]

The bargain made by the licensee is clear—if, when civil or criminal charges are pending, the choice is made to voluntarily surrender the license rather than face revocation (perhaps because it is advantageous for the licensee to not have a license revoked), then the licensee is agreeing to forgo forever any opportunity to obtain the same license type in Alaska. True, if a licensee wishes to later become relicensed in Alaska, then revocation is a better option. Importantly, a licensee who wanted to later seek reinstatement, but avoid a hearing, could acquiesce to the accusation, or contest some issues and deny others.[53] While Dr. Ahmad now asserts that his voluntary surrender was based in part on bad legal advice and in part on the desire to avoid an expensive proceeding, those claims do not make enforcement of AS 08.64.334 by the Division and Board a violation of due process.[54]

Dr. Ahmad's arguments about statutory language are unavailing. His interpretation of the word "may" to give discretion fails because when "may" is followed by "not," the discretion is eliminated. Thus, although "may" means "may or may not," "may not" means only "may not." As to whether the use of "return" indicates that the only prohibited act is giving back the same license that was taken away, potentially opening the door to the possibility of a new license

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[51] An additional reason to be cautious about giving summary adjudication based on the permanent ban in AS 08.64.334 is that under some facts, the permanent ban might not be enforced. As Dr. Ahmad argues, if the charges were dismissed for a reason other than the voluntary surrender, then the permanent ban might not take effect. Here, however, no evidence suggests that the charges were dropped for any reason other than the voluntary surrender. To the contrary, the Board's order adopting the surrender makes plain that it did so in lieu of revocation proceedings. Div. Summ. Adj. Ex. 4, p. 1. A second example is discussed in *Ilardi*—the possibility that the permanent ban might be unenforceable under equitable estoppel principles. That concern does not apply here because, unlike in *Ilardi*, the voluntary surrender agreement clearly advised that voluntary surrender meant that Dr. Ahmad could not seek a return to licensure.

[52] AS 44.62.

[53] AS 44.62.390.

[54] *See* Ahmad Opening Brief at 2; Ahmad Reply at 5.

issuing at some future date, the statute read in totality does not support this reading. Specifically, the first sentence of AS 08.64.334 allows for the "return" of a voluntarily surrendered license that did not result in the dropping of charges when "the board determines, under regulations adopted by it, that the licensee is competent to resume practice."[55] Clearly, this sentence applies without regard to whether the former licensee is applying for a return of an unexpired (but surrendered) license or is requesting a new license to return to licensure in the same profession. Either way, a former licensee whose license surrender did not result in the dropping of charges would be subject to the scrutiny required under AS 08.64.334 and 12 AAC 40.965 if applying for a new license.

Because the term "return" in the second sentence of AS 08.64.334 must mean the same thing as it does in the first sentence, the better interpretation of "return" is that it means returning to the same type of license that was voluntarily surrendered, without regard to whether the licensee is applying for reinstatement of an unexpired licensee or for a new licensee of the same type that was voluntarily surrendered.

Dr. Ahmad also asserts that his interpretation is consistent with what he calls "legislative history," citing a generalized legislative policy, gleaned from the licensing statutes as a whole, that the legislature was seeking to ensure that qualified physicians were not unnecessarily or unfairly precluded from licensure.[56] He is correct that this is a general policy.[57] It is also true, however, that the licensing statutes generally support a policy of ensuring that the public is protected from physicians whose judgment is impaired or who otherwise might engage in unsafe practices.[58] In short, nothing in AS 08.01 or AS 08.64 establishes that AS 08.64.334 should not be enforced here as written.

For the foregoing reasons, this decision concludes that, because Dr. Ahmad's voluntary license surrender in 2016 resulted in the dropping of civil charges pending against him, AS

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55 AS 08.64.334.

56 Ahmad Opening Brief at 4. It is a general principal of Alaska statutory interpretation that "words and phrases shall be construed according to the rules of grammar and according to their common and approved usage." AS 01.10.040(a). "[T]he plainer the language of the statute, the more convincing any contrary legislative history must be . . . to overcome the statute's plain meaning." *Alaska Ass'n of Naturopathic Physicians v. State, Dep't of Com.*, 414 P.3d 630, 634 (Alaska 2018) (quoting *Peninsula Mktg. Ass'n v. State*, 817 P.2d 917, 922 (Alaska 1991)). As the Division notes, Dr. Ahmad does not actually cite to any legislative proceedings or discussion that supports his view. The Division has asserted, and attached a copy of legislative proceedings supporting its assertion, that the legislature did not discuss what was meant by "return." Division Reply Brief at 12; Div. Ex. 1.

57 *See, e.g.,* AS 08.64.101(a)(2); AS 08.64.331; AS 08.01.075.

58 *See, e.g.,* AS 08.64.101(a)(3), (4); AS 08.64.312; AS 08.64.326; AS 08.64.331; AS 08.64.332; AS 08.64.336; AS 08.64.338.

08.64.334 precludes the Board from granting him a license. The denial of Dr. Ahmad's 2021 license application is therefore affirmed. Although this holding is dispositive of the single issue before the Board, this decision will nevertheless also discuss Dr. Ahmad's arguments that go to the second and third grounds for denial of a new license as set out in *Ilardi.*

C. The Board's ability to rely on its 2016 decision

Because it is impossible or at least utterly illogical to consider Dr. Ahmad's current application without the context of the 2016 action, we will first consider the argument, advanced by Dr. Ahmad at various points in his briefing, that the Board's findings in 2016 should be given no weight here. This argument fails under the doctrine of *collateral estoppel,* a legal principle that, when applicable, allows a party to prevent relitigation of the same issues that were determined in a previous judicial or administrative proceedings.[59] The four elements that must be satisfied before applying collateral estoppel are (1) the party being precluded from litigating the issue must be the same party (or legal equivalent of being the same) who litigated the issue in the other proceeding; (2) the issue precluded from relitigation must be identical to the issue decided in the first proceeding; (3) the issue being precluded must have been resolved in the first proceeding by a final decision on the merits; and (4) the determination of the issue must have been essential to the final decision.[60]

Dr. Ahmad argues strenuously that the 2016 proceedings and decision cannot be given preclusive effect here because there was no "final decision on the merits" and because the 2016 proceeding involved different claims and issues than this proceeding. In his view, in 2016, the Board was only deciding whether the facts were sufficient to conclude that he was a danger to the public. Because the only claim in that proceeding was that the facts justified summary suspension, he contends, the Division's claim that the facts justified revocation was never litigated. While the statutory scheme entitled him to further proceedings on that claim, none were held, because he voluntarily surrendered his license.[61] In Dr. Ahmad's view, then, nothing in the 2016 decision prevents relitigation of any issues regarding what occurred in 2015-16 or whether he exhibited impaired judgment and violated the standard of care.[62]

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[59] *Latham v. Palin,* 251 P.3d 341, 344 (Alaska 2011) ("Collateral estoppel, or issue preclusion, 'bars the relitigation of issues actually determined in [earlier] proceedings.'" (quoting *Jeffries v. Glacier State Tel. Co.,* 604 P.2d 4, 8 n. 11 (Alaska 1979))).

[60] *Id.*

[61] AS 08.01.075(c).

[62] Ahmad Opening Brief at 2, 6; Supplemental Brief at 5-7.

Dr. Ahmad is correct that the claim in the summary suspension proceedings (was he a danger to the public?) was different from the claim here (is he eligible to receive a license?). Yet, the fact that the *claims* are different does not mean that the *facts and issues* decided in the prior proceedings can be relitigated. In the 2016 decision, the Board made findings of fact regarding what occurred in 2015-16. It also drew conclusions regarding Dr. Ahmad's judgment, decisionmaking, and adherence to the standard of care. Those issues were essential to the Board's final decision on summary suspension. While the claim was different in the 2016 proceedings, it does not follow that Dr. Ahmad can relitigate underlying facts and issues that were litigated and decided in 2016.[63]

Further, Dr. Ahmad is incorrect that that the 2016 decision was not a final decision. It was a final decision on summary suspension. If Dr. Ahmad disagreed with the facts and conclusions found in the decision, he could have appealed it to superior court.[64] The Alaska Supreme Court has held that it will allow administrative agencies to invoke the doctrine of *collateral estoppel* to prevent relitigation of issues decided in a previous proceeding when the agency had primary jurisdiction over the issue being decided, issued a written decision, and the "the administrative decision resulted from a procedure that seems an adequate substitute for judicial procedure and that it would be fair to accord preclusive effect to the administrative decision."[65]

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[63] *Cf., e.g., State v. United Cook Inlet Drift Ass'n,* 895 P.2d 947, 950 (Alaska 1995) (explaining "[t]he applicability of collateral estoppel to a particular set of facts"). By way of example, in his briefing Dr. Ahmad laments that he did not impeach the Division's expert, Dr. Stacey, in the summary suspension proceedings in 2016, and asserts that had he pursued his hearing on the merits of the revocation, he would have been able to "frame his naivety and to highlight unreliable aspects of his testimony." Ahmad Reply Brief at 2-3. This line of argument is not well taken. The Board found Dr. Stacey credible in 2016, and was persuaded by his testimony that Dr. Ahmad had breached the standard of care; Dr. Ahmad cannot relitigate that issue now. Dr. Ahmad also now asserts that he could have called "a large, convincing group" of witnesses who would have testified that their "quality of life was restored through [his] treatment." Reply at 3. Again, the time for this testimony (which, even if true, would not refute the allegations against him) was in 2016. Dr. Ahmad also asserts, "my practice did not contribute to the staggering number of overdose deaths in Alaska." Reply at 6; Supp. Br. at 10. In addition to the collateral estoppel issues already identified, that assertion is essentially unknowable, given that we do not know the extent to which there was a secondary trade in the tremendous volume of controlled substances prescribed by Dr. Ahmad.

[64] AS 08.01.075(c) ("A person may appeal an adverse decision of the board on an appeal of a summary suspension to a court of competent jurisdiction").

[65] *Harrod v. State, Dep't of Revenue,* 255 P.3d 991, 1000 (Alaska 2011) (citations omitted). In *Harrod*, the proceeding given preclusive effect was an "informal conference." The issues found in that proceeding could have been relitigated in a formal hearing, but were not. AS 43.05.240; AS 43.05.430. The court found that the informal conference decision was a final decision on the merits entitled to preclusive effect. Notably, here, Dr. Ahmad's multiday summary suspension hearing provided considerably more procedural protections, including an impartial decisionmaker and opportunities for cross-examination, than are typically provided in an informal conference.

Here, the Board had primary jurisdiction over the facts and issues necessary to summarily suspend a physician's license.[66] It issued a written decision. The process provided in 2016 was extensive, including an impartial decisionmaker, and an opportunity to present evidence and witnesses, to cross-examine opposing witnesses, and to make motions. Although the process was expedited, it was not immediate: the petition for summary suspension was filed on May 4, 2016, and the four-day hearing convened on May 26-27 and then reconvened on June 6-7.[67] Another multi-week process ensued in which parties were supplied with a proposed decision and could identify alleged errors and bring them to the attention of the Board, whose final decision did not occur until August. As noted, Dr. Ahmad could have requested additional proceedings on the facts and issues that he now claims were never established. It follows that Dr. Ahmad may not relitigate the facts and issues decided in the 2016 decision.

Although giving the 2016 decision preclusive effect makes the analysis relatively simple, there is another approach that arrives at the same place. In this case, Dr. Ahmad has the burden of proof. He must prove that his medical judgment is not impaired and that he is qualified to be licensed as a physician. In analyzing his application, the Board does not have to shelve its common sense or ignore what has occurred in the past. Even without relying on the *findings* of the 2016 decision, we know that Dr. Ahmad ran a pain clinic in Anchorage, that several pharmacists reported irregularities in his prescribing practices, that after a hearing the Board sustained summary suspension of license, and that Dr. Ahmad then voluntarily surrendered his license. A commonsense inference from this chain of events is that, more likely than not, Dr. Ahmad's judgment was impaired and he engaged in practices that were subject to discipline. It still follows that, to avoid denial under the second and third grounds described in *Ilardi,* Dr. Ahmad must prove, by a preponderance of the evidence, that this inference is no longer a concern. Although this inference is not as robust as the conclusions we draw from giving the 2016 decision preclusive effect, and, unlike giving preclusion to the facts and issues from 2016, this inference would allow some reconsideration of the 2016 fact finding, it nevertheless lands us in roughly the same place.

In short, even if the final sentence of AS 08.64.334 didn't establish an absolute bar to relicensure here, sufficient grounds exist for requiring a significant volume of evidence for Dr. Ahmad to prove his eligibility for relicensure as described under the other prongs of *Ilardi*. We

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66 AS 08.64.331(c); AS 08.01.075(c).

67 This timeline is presented in the Division Reply Brief at 2.

proceed, then, to consider Dr. Ahmad's evidence and argument regarding his professional judgment and the licensing significance of his prior disciplinary violations.

D. Has Dr. Ahmad proven he is competent to resume practice?

1. *Ilardi* framework

Returning to *Ilardi*, the second reason cited by the Board for denying the application in that case was the separate statutory requirement (also found in AS 08.64.334) that a surrendered license "may not be returned unless the Board determines, under regulations adopted by it, that the licensee is competent to resume practice." The Board noted that the term "incompetence" is defined in regulation to mean "lacking sufficient knowledge, skills, or professional judgment in the field or practice in which the physician . . . engages, to a degree likely to endanger the health of his or her patients."[68] Citing undisputed evidence that Dr. Ilardi had engaged in sexual contact with a fragile and vulnerable patient, and still failed to appreciate the gravity of his violation of ethical principles (particularly for a psychiatrist), the Board held that he could not be licensed because he "demonstrate[d] poor professional judgment that continues to the present."[69]

2. Evidence of prior impairment of Dr. Ahmad's professional judgment

The evidence that Dr. Ahmad's professional judgment was impaired in 2016 is staggering. The 2016 decision cited evidence and made findings that Dr. Ahmad's practice was a high-paced pain clinic on a de facto setting of providing high-dose opioids to every patient. The decision thoroughly documented that these prescriptions were frequently inappropriate. Patients were not adequately screened or excluded for contraindications such as substance abuse, cardiac or other physical health risk, or mental health.[70] Patients were not given clear documented instructions to titrate the medications.[71] Many sections of the patient chart notes for patient's initial visit were not based on an individualized assessment but instead were identical for all patients.[72] Every patient seen was treated with controlled substances.[73] Patients were prescribed dangerously high doses of opioids, frequently alongside benzodiazepines.[74] The Division's expert witness gave persuasive testimony, accepted by this Board, that the prescribing patterns seen in Dr. Ahmad's practice was "not standard of care anywhere."[75]

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68 *Id.* at 8 (quoting 12 AAC 40.970 (ellipses inserted by *Ilardi*)).
69 *Id.* at 8-9.
70 *Ahmad I* at 14-15; 20.
71 *Id.* at 21.
72 *Id.* at 17-18.
73 *Id*., at 16.
74 *Id*., at 16-18.
75 *Id*., at 16.

The decision on summary suspension noted the Board's "grave concerns about Dr. Ahmad's professional judgment."[76] Certainly, the astonishing popularity of Dr. Ahmad's clinic as his prescribing practices became known supports an inference that his judgment favored having a booming business over safeguarding his patients from risk. In the face of this record of impaired and deficient judgment, *Ilardi* supports the conclusion that, even if Dr. Ahmad's voluntary surrender weren't *already* a complete bar to relicensure, the Board cannot issue a license to Dr. Ahmad unless he can now prove that his professional judgment has been rehabilitated.[77]

3. Evidence put forth by Dr. Ahmad

In support of that assertion, Dr. Ahmad has had made statements in his brief regarding how he now views the events that occurred in 2015-16. He has also submitted a 289-page exhibit that includes testimonials and descriptions regarding his work on cruise ships, and three assessments of his fitness to practice in Australia. While the evidentiary value of these testimonials from absent witnesses may be limited, for purposes of analysis, this decision will accept at face value the representations in the exhibits regarding the skill and competence Dr. Ahmad has demonstrated in his role as a doctor on cruise ships. To be clear, this decision will not be making findings on his competence. We can, however, assume that he has demonstrated medical competence in this particular setting, and then analyze how this conclusion, if proven, would affect the analysis. As to these issues, Dr. Ahmad's exhibits and Briefs include the following:

- Statements from three chief doctors who supervised him, generally describing him as a team player and describing specific instances in which Dr. Ahmad demonstrated medical competence and skill.[78]
- Statements from doctors whom he supervised after he was promoted to chief doctor on a cruise ship that praise his skill, competence, and leadership.[79]
- Testimonials from patients who praise his skill and manner.[80]
- Before-and-after pictures of patients, and descriptions of treatments and procedures successfully performed by Dr. Ahmad.[81]

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76 *Id*., at 16.

77 *See* AS 08.64.334; 12 AAC 40.970 ("As used in AS 08.64 and these regulations, 'professional incompetence' means lacking sufficient knowledge, skills, or professional judgement in that field of practice in which the physician . . . concerned engages, to a degree likely to endanger the health of his or her patients.").

78 Ahmad Ex. 1 at 3-5.

79 Ahmad Ex. 2 at 29; Ex. 3 at 36.

80 Ahmad Ex. 4 at 55-57; 58-62, 65-68, 70.

81 Ahmad Ex. 4 at 48-54, 64, 69.

- Certificates for course work that he completed after his summary suspension, including courses in forensic and clinical management of sexual assault, and basic, advanced, and pediatric life support.[82]
- An opinion from a physician noting that "Dr. Ahmad had superb anesthesia training" and [h]is credentials have been impeccable." Further, "during his training at Yale, there were never any negative comments or concerns about his professionalism or competence."[83]
- An opinion from a second physician calling Dr. Ahmad's 2015-16 record-keeping practices "excellent" and his prescriptions "typical of many pain specialists working in private practice 5 years ago."[84]
- An opinion from a third physician regarding Dr. Ahmad's practice at the Craigieburn Central Medical Centre in Australia.[85]
- An assertion that he "provided Telemedicine free of charge to patients residing in Pakistan on [his] Pakistan license."[86]

The evidence summarized above, if true, paints a picture of Dr. Ahmad as a highly intelligent, charismatic, and skillful physician with leadership skills.

4. Whether Dr. Ahmad has met his burden of showing sufficient professional judgment necessary for licensure in Alaska

Accepting this evidence provisionally, we can assume that in certain settings Dr. Ahmad can exercise sound judgment and perform medical services with competence. The threshold problem for Dr. Ahmad, however, is that this accepting these assumptions does not refute or explain away the profound failure of judgment he demonstrated in the period leading up to his license surrender. First, the controlled environment of a cruise ship does not offer the opportunity to enjoy a thriving practice in a short time by engaging in unsound and unsafe practices. Thus, nothing in his cruise ship practice provides assurance he would not exercise bad judgment to the detriment of patients in a different environment.

More fundamentally, though, the particular area of poor professional judgment shown by Dr. Ahmad in 2015-2016 was operating a profit-driven enterprise that ignored profound patient and public safety risks. That is, when he placed patients and the public at risk, he did not do so wholly through inadvertence. These were not unanticipated or unforeseeable negative consequences of his practice. Rather, Dr. Ahmad specifically built a clinic modelled around

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82 Ahmad Ex. 1 at 23-25; Ex.4 at 39-42.
83 Ahmad Ex. 15 at 239.
84 Ahmad Ex. 16 at 282. Both physicians knew Dr. Ahmad; before asking one for an opinion, Dr. Ahmad contacted him regarding co-authoring a book. Ahmad Exs. 15, 16.
85 Ahmad Ex. 6 at 80-82.
86 Ahmad Reply Brief at 7.

reckless practices, with no apparent function beyond the distribution of opioids to every patient he saw. Like other previously-licensed practitioners who engaged in intentional harmful conduct for self-serving purposes, he did not have a "lapse in professional judgment" as much as a profound abandonment of his professional obligations.[87] The assessment of his professional judgment cannot ignore this reality.

Dr. Ahmad purports to "acknowledge the seriousness of the substantiated findings that led to the license suspension in 2016,"[88] and cites his subsequent "commitment to patient safety," "professional development and recognition," "track record of safe practice," and "eagerness to implement current pain management protocols and standards," as proof that he has cured any shortcomings.[89] Dr. Ahmad also represents that he has shifted his practice to a focus on "general practice, critical care, and providing anesthesia," and that he "no longer prescribes opioids outside of "acute pain due to trauma or surgery."

Even if we entertain Dr. Ahmad's claim to now understand "the seriousness" of the issues raised in 2015-16, and his argument that he has been rehabilitated by providing quality patient care in his maritime medical practice, these arguments do not address the larger concerns identified above. The most charitable possible view of Dr. Ahmad's actions as a licensee in 2015-16 is that he ignored the flagrant danger signals regarding his practice and exercised bad medical judgment to prescribe dangerous narcotics to a vulnerable population without adequate recordkeeping, instruction, or consideration of more conservative and viable approaches. That he now claims to recognize the seriousness of *that* particular conduct tells us nothing about his ability to properly evaluate a future scheme that appeals to his entrepreneurial spirit or otherwise offers him rewards similar to those that motivated him to conduct his pain clinic to the detriment of patients and the public as he did in Anchorage in 2015-16. This is particularly so given the recklessness with which he operated his Anchorage-based clinic, and his failure to offer any meaningful explanation for his profound departures from the standard of care at that time.

More fundamentally, there is a lack of satisfactory evidence that Dr. Ahmad does, in fact, appreciate the seriousness of his 2015-2016 misconduct. Indeed, a significant portion of Dr. Ahmad's briefing in the early stages of this case were devoted to attempts to demonstrate that his practice was appropriate, and that the Board's suspension of his license an unwarranted rush to

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87 See, e.g., *In re: Ilardi, OAH No. 10-0114-MED; In re: Pappenheim,* OAH No. 22-0613-MED (Alaska St. Med. Bd. 2023), https://aws.state.ak.us/OAH/Decision/Display?rec=7012.

88 Ahmad Opening Brief at 1.

89 *Id.* (capitalization and bolding removed); Ahmad Reply Brief at 5.

judgment. Even now, he asserts that in 2015-16, his "prescribing was within the FDA and CDC guidelines" and that notes an expert has concluded that in Australia "the medications prescribed by Dr. Ahmad were generally clinically indicated."[90]

Dr. Ahmad is precluded, of course, from rearguing the facts and issues found in the 2016 decision, but even if we were to consider his arguments that his practice was within "guidelines" of the time, that argument is wholly unpersuasive. While it is undeniable that the standard of care evolves over time, and that opioid prescribing standards in particular have shifted over time, the evidence is overwhelming is that Dr. Ahmad's 2015-2016 Alaska practice was well outside accepted standards of practice. The evidence from what occurred in his short-lived period of active practice in Alaska – including the rapid rise in the popularity of his practice, the ability of multiple pharmacists to recognize instantly the dangers of his inappropriate prescribing, and the well-known dangers and addictive nature of opioids, particularly at the doses and in the combinations he was prescribing – confirms that what he was doing was far out of bounds of the standard of care.[91]

The evidence further compels a finding, as the Board made in 2016, that Dr. Ahmad either knew or should have known that his practice contravened accepted standards. Either option portends poorly for an application for licensure by this Board. If he knew what he was doing was dangerous and unacceptable, then he cannot be trusted to not similarly risk patient and public safety in the future, given what appears to be an utter lack of remorse or acknowledgement. If he truly did not know that what he was doing was dangerous and unacceptable, then his inability to see what everyone else could see, and the ease with which he is able to ignore the red flags, confirm again that his judgment is so profoundly impaired that, in spite of his formidable intelligence and medical training, he is able to blind himself to reality when it is to his advantage to do so.

In short, it is fatal to Dr. Ahmad's application that he fails to acknowledge the gravity of his wrongful conduct in 2015-16, provide an explanation for what happened, and explain what has changed so that we can be confident of future patient and public safety. As in *Ilardi,* his characterization of his reckless practices in 2015-16 as being appropriate for the standards of that time demonstrates that he "still does not grasp the seriousness of his misconduct."[92] This

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[90] Ahmad Reply Brief at 4 (second quotation is quoting report of Dr. James Bradley, Ahmad Ex. 6 at 81).

[91] 2016 Decision at 29. The fact that Arkansas had brought an action against him in 2013 relating to his controlled substance prescribing practices is an additional red flag, albeit less significant than others.

[92] 10-0114-MED at 9.

suggests, at least as to this issue, an ongoing deficit in professional judgment that provides a separate ground upon which to deny his application.[93]

E. Has Dr. Ahmad established that his past disciplinary violations should not preclude his new application?

Lastly, the third separate reason provided by the Board for having denied Dr. Ilardi's application for a new license in that case is the severity of his prior misconduct. The licensing statutes give the Board discretion to deny a new application "for the same reasons that it may impose disciplinary sanctions under AS 08.64.326."[94] *Ilardi* explains that the Board will exercise that discretion to deny an application for a doctor whose "misconduct is very serious" and who "does not appreciate its seriousness, leaving him at risk to reoffend."[95]

Here, while his particular type of misconduct was nothing like Dr. Ilardi's, Dr. Ahmad, too, engaged in serious misconduct sanctionable under AS 08.64.326. His acts of opening and operating a clinic that became wildly popular in a very short time, churning through patients with insufficient individualized assessment, freely prescribing powerful drugs that had known dangers (including the danger of illicit resale and misuse), violated the standard of care and suggest that to a deeply concerning degree he prioritized profit over patient and public safety.

As in *Ilardi*, there is insufficient evidence to conclude that Dr. Ahmad appreciates the seriousness of his prior misconduct.

The record establishes that Dr. Ahmad's 2016 licensing action before this Board led to cascading negative impacts on his professional prospects and licensure – ultimately leading, it appears, to revocation of his licenses at least in Arkansas and Australia. Undoubtedly, Dr. Ahmad did not foresee these events when he decided to establish a pain clinic in Anchorage. But Dr. Ahmad's 2016 licensing action was entirely the result of his own choices and conduct in the kind of practice he undertook to open and operate. And licensees are not entitled to evade the consequences of their misconduct simply because the consequences are, as here, far-reaching.

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93 Dr. Ahmad also asserts that he has "no intentions to practice in Alaska" and that, since 2016, he has been "only prescribing opioids under extenuating circumstances in acute pain due to trauma or surgery." Ahmad Opening Brief at 1. These assurances are not relevant to the issue before the Board here. A license to practice medicine in Alaska is a license to practice medicine in Alaska and under state law, the Board cannot give such a license to a practitioner who does not qualify for the license, even if that applicant promises never to practice here. And while Dr. Ahmad's departure from default opioid prescribing is welcome news, it is not sufficient to ameliorate the larger underlying judgment concerns described above.

94 AS 08.64.280(b).

95 OAH No. 10-0114-MED at 9.

Certainly, Dr. Ahmad is credible in stating that he sincerely wishes to return to the practice of medicine outside the limited realms permitted under his current licensure. He has presented what evidence that, at least in some settings, he is providing acceptable medical care to patients. However, given the significant evidence of his earlier misconduct, and the lack of credible evidence that he has appropriate insight into its seriousness, this ground too supports a separate basis for denial of this application.[96]

IV. Conclusion

Dr. Ahmad is ineligible for a license because his 2016 voluntary surrender of his license resulted in the dropping of charges pending against him in a revocation action filed by the Division. Even if the voluntary surrender were not a complete bar, Dr. Ahmad has failed to meet his burden of proof regarding his judgment and fitness for a license. Accordingly, the denial of his 2021 license application is affirmed.

Dated: June 28, 2024.

Cheryl Mandala
Administrative Law Judge

[96] The Division's brief and the Statement of Issues included arguments relating to Dr. Ahmad's honesty and adherence to reporting requirements, which the Division asserts provide independent grounds for denial under AS 08.64.326. Division Brief at 5-7, 10-12. Because the grounds for denial discussed in this decision are so clearly established in precedent and on these facts, those allegations will not be evaluated here.

Adoption

The ALASKA STATE MEDICAL BOARD adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 9th day of August, 2024.

By: [redacted]

Eric Nimmo, M.D.
Board Chair