BEFORE THE MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

IN THE MATTER OF:

BENJAMIN ALAN FEINZIMER, D.O. LICENSE NO. 26008

DETERMINATION AND ORDER

The above titled matter came before the Mississippi State Board of Medical Licensure ("Board") in Jackson, Hinds County Mississippi, on May 9, 2024, following the Board's denial of a Motion to dismiss and a Request for Continuance[1] filed by Dr. Bejamin A. Feinzimer's ("Licensee"). On or about March 28, 2023, the Board received a complaint from the Mississippi Board of Nursing ("MBON") and thereafter initiated their own complaint against Licensee.

Board members present for the May 9, 2024, proceedings were Michelle Y. Owens, M.D., President; Ken Lippincott, M.D.; Kirk Kinard, D.O.; David McClendon, M.D.; William Eugene Loper, M.D.; and Renia R. Dotson, M.D. Board members Thomas Joiner, M.D. and Allen Gersh, M.D. appeared remotely. Consumer members Koomarie "Shoba" Gaymes and Wesley Breland were also present; however, Breland did not participate in deliberations in this matter, because he left prior to the conclusion of the hearing. Accordingly, a quorum of Board members was present throughout the hearing and deliberation.

Board Counsel Paul Barnes, Esq., presented the charges as set forth in the Affidavit as filed herein. Also present was Complaint Co-Counsel Honorable Stan T. Ingram. Licensee, having been served with the Summons and Affidavit and being fully informed of his rights to a formal hearing before the Board, was represented by

[1] Licensee, through counsel, filed preliminary, evidentiary, and omnibus motions prior to the proceedings. The Hearing Officer ruled on said motions prior to the hearing which are hereby affirmed by virtue of this Order.

Philip Chapman, Esq. and Molly Walker, Esq.[2] The matter was called to hearing after Licensee's third motion for continuance was denied by the Board.

Alexis E. Morris, Special Assistant Attorney General, served as Administrative Hearing Officer, presided over the hearing, and was directed to prepare the Board's written decision in accordance with their deliberations.

And now, upon consideration of all the materials produced in the record before the Board along with the testimony presented at the hearing, the Board makes the following Findings of Fact, Conclusions of Law, and Order based on clear and convincing evidence:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Board is established pursuant to the Mississippi State Board of Medical Licensure Act, Title 73, Chapter 43 of the Mississippi Code of 1972 as amended, and is charged with the duty of licensing and regulating the practice of medicine in the State of Mississippi under title 73, Chapter 25 of the Mississippi Code of 1972 as amended.

2. Sections 73-25-29, 73-25-83 and 73-25-87 of the Mississippi Code Ann. (1972) as amended provide that the Board may revoke or suspend a license or take any other actions as deemed necessary if a licensee has violated any provisions therein.

3. All parties were properly noticed for the matter now pending before the Board.

4. Licensee is a physician licensed to practice medicine in the state of Mississippi, currently holding Mississippi Medical License Number 26008. Said license is valid until June 30, 2024.

5. At the time the affidavit was issued, Licensee listed his primary medical practice as 5840 El Camino Real, Carlsbad, CA. Licensee was also listed as the Medical Director of IDT AZ1, LLC in Arizona, doing business as "iDrip Therapy."

6. Licensee is a practitioner of emergency medicine at NorthShore Health Systems in Evanston, Illinois. He previously worked as an Emergency Medical Technician ("EMT"), served as Medical Director for a SWAT team, and helped create the Physician Response Vehicle Program in Evanston.

[2] At one point, Licensee was represented by Philip Chapman, Esq., Michael J. Bentley, Esq., Matthew R. Ludowig, Esq., and Terry Ford, Esq.; however, Attorney Bentley was unavailable for the hearing, Attorneys Ford and Ludowig did not appear at the hearing, and Attorney Walker filed an entry of appearance the day before the hearing.

7. On or about March 28, 2023, the Board received a complaint from the Mississippi Board of Nursing (MBON) against Jessica Bates ("Bates"), RN. The complaint alleged that two IV hydration practices were being operated by registered nurses. Bates was named as the owner and operator of the practice in Oxford, Mississippi. Ben Oglesby ("Oglesby"), RN, was named as the owner and operator of the practice located in Sturgis, Mississippi. These businesses operated under the name iDrip Therapy ("iDrip").

8. iDrip was listed as a company that provided support to individuals who set up IV hydration practices in many different states. These practices supplied IV hydration therapy to the public. They were classified as mobile hydration stations because the staff would drive to the patients' locations to administer the IVs. Primarily the practices were staffed by nurses, paramedics, or other healthcare workers without independent legal prescriptive authority. The Mississippi practices were not staffed using mid-level providers such as Advanced Practice Registered Nurses (APRNs) or Physician Assistants (PAs) who do possess lawful prescriptive authority.

9. Bates and Oglesby stated to the MBON that they had been operating under "standing orders" from their medical director, Licensee. During the MBON investigation, Bates and Oglesby advised that they ordered medications, vitamins, and IV fluids for iDrip from Empower Pharmacy in Texas.

10. MBON found that Bates was administering the medications, through IV, to patients without any diagnosis or examinations of patients. Accordingly, the MBON found Bates guilty of 1) practicing nursing beyond the scope of the license or directing others to practice beyond their scope, 2) conduct likely to deceive, defraud, or harm the public, 3) negligently or willfully practicing nursing in a manner that fail[ed] to meet generally accepted standards of such nursing practice, and 4) possessing, obtaining, furnishing, or administering drugs to any person, including self, except as legally directed—all in violation of the Mississippi Nursing Practice Act. *See* MSBML 00032-330.

11. Following receipt of the MBON complaint, the Mississippi Board of Pharmacy ("MBOP") became involved in this matter and traveled to Empower Pharmacy in Texas, which currently holds Mississippi licenses as both a pharmacy (503A) and an outsourcing facility (503B), for an administrative inspection.

12. Following an investigation, the MBOP determined that the supplier of the compounded medications (as well as other ingredients that were further compounded and administered intravenously once the ingredients were received by iDrip locations) was indeed Empower Pharmacy in Texas.

Empower Pharmacy has 2 (two) physical locations–one for their 503A pharmacy and one for their 503B pharmacy.

TESTIMONY OF DR. CATINA WHITE

13. Dr. Catina White holds a Doctor of Pharmacy degree from the University of Mississippi Medical Center and currently serves as the Director of Compliance for the MBOP. She testified that she was familiar with Mississippi state and federal laws and regulations that govern prescriptions and compounded medications.

14. Dr. White testified that after the MBOP received the complaint, they determined that the complaint involved the use and injection of compounded medications. Dr. White explained that compounded medications are those that are specifically mixed and prepared based on a prescription.

15. Dr. White explained the difference between 503A and 503B pharmacies and their shipping guidelines. A 503A pharmacy is a pharmacy that compounds medicine tailored to individual patients based on prescriptions submitted by their healthcare professionals. A 503B pharmacy or "outsourcing facility" produces large batches of medications without patient-specific prescriptions. These medications are administered by healthcare providers in hospitals or clinics. Additionally, a 503B pharmacy must make their facilities available for inspection by the U.S Food and Drug Administration ("FDA") and comply with the Current Good Manufacturing Practice ("CGMP") requirements.

16. Dr. White also testified that although certain medications or supplements do not typically need prescriptions when taken by mouth, any supplements, vitamins, or medications administered through an IV in their liquid form require a prescription and are, by definition, prescription drugs.

17. Following the visit to Empower, MBOP was provided documentation by Empower which included prescriptions shipped to Mississippi as well as a spreadsheet that included ordering credentials, dates, and other pertinent information such as shipping addresses and patient (in the case of 503A drugs) or facility names (in the case of 503B drugs). *See* MSBML 000145-148.

18. The spreadsheet, which was later filtered only to include only medications ordered using Licensee's credentials and electronic signature, evinced several orders of medications and deliveries of injectables to nurses in Mississippi.

Bates told MBON that she had the medications delivered to her address in Oxford. Licensee was listed as the prescriber on all the iDrip prescriptions for named patients, and all the clinic stocks that the iDrip nurses used were also ordered using his credentials and electronic signature. *See* MSBML 000087-135. All told, prescriptions for specific patient names were shipped to eight locations in Mississippi and seven named iDrip facilities or practices, for example, "IDRIP THERAPY - HERNANADO" or "IDRIP THERAPY – NESBIT." *See* MSBML 000145-148.

19. Dr. White reviewed iDrip's list of menus of medication and supplement names (bearing names such as "Hangover Cure" and "Beauty Blend") and explained that each ingredient listed on the "menu" was presented to patients and the medications were added to an IV in liquid form to "treat" the patient. *See* MSBML 000137-143. Dr. White also explained that using the medication in this way would require a prescription, and that blending multiple ingredients for administration in an IV in this way constituted compounding.

20. Dr. White also expressed that in Mississippi physicians, APRNs, and Physician Assistants (Pas) are the only healthcare providers that have lawful prescriptive authority to order a 503B compounded medication.

TESTIMONY OF SUPERVISOR MICHAEL SMITH

21. Supervisor Michael Smith has been the Board's Investigations Supervisor for four years and reviewed the complaint against Licensee and iDrip. *See* MSMBL 000013-14.

22. Smith stated that he reviewed the spreadsheet and other investigative materials from Empower and assigned the case to Agent Ron Horner. Smith also testified that he was the investigator who filtered the complete spreadsheet from Empower (that contained information on all medications ordered and shipped to Mississippi locations by all providers) using Licensee's name as a filter key word to produce a spreadsheet reflecting only medications ordered using Licensee's name and credentials.

23. Smith also testified that he attended the regulatory compliance meeting in September 2023 with the Licensee, Board counsel, and the Executive Director, because Horner was unavailable.

TESTIMONY OF AGENT RON HORNER

24. Agent Ron Horner has been at the Board for about one and half years as an investigator but has been in law enforcement for about twenty years.

25. He testified that he was the primary investigator assigned to the complaint against Licensee.

26. Horner stated that he met with the investigators from MBON and MBOP and received documents regarding their investigation of Bates, Oglesby, and Empower.

27. His investigation also included reviewing documents presented as "patient records." *See* MSBML 000015-86. These documents are noted as "Jessica's iDrip Intake Form[s]." These forms included patients' personal information, a few questions regarding their health history, and consent forms signed by the patients.

TESTIMONY OF JONATHAN DALTON

28. Jonathan Dalton has served as the Director of Investigations for the Board for four years but has been employed by the Board for fifteen years.

29. Dalton testified that he initiated the complaint against Licensee under the Board rules and regulations following a conversation with the MBON regarding their investigation of iDrip.

30. He also testified that the Board, MBON, and MBOP often investigate matters together and collaborate with investigations of their respective licensees.

TESTIMONY OF DR. KENNETH CLEVELAND

31. Dr. Kenneth Cleveland has served as the Executive Director of the Board for over 6 years.

32. He testified that he is responsible for, among other things, triaging complaints.

33. Dr. Cleveland was present for Licensee's regulatory compliance meeting in September 2023 and usually schedules those meetings as an informal way for the licensees to respond to the allegations set forth in complaints.

34. He testified that licensees are given notice of these meetings and are informed of their right to have counsel present during these meetings.

35. Dr. Cleveland was also questioned about the outcome of other Board investigations involving other licensees and IV clinics. However, he noted that he could not comment on any active investigations and that each disciplinary

action issued against a licensee from the Board was fact-specific—acknowledging different disciplinary actions for licensees involved with mobile IV hydration therapy businesses and legend drugs.

36. Dr. Cleveland explained that a legend drug requires a prescription but is not a controlled substance. In this case, to prescribe these medications, Licensee was required to establish a doctor/patient relationship, perform a physical examination, and assess the patient for the medications to be prescribed and administered.

TESTIMONY OF LICENSEE

37. Licensee testified about his participation in the Physician Response Vehicle Program and his work as an EMT.

38. Licensee testified that he was the Medical Director of iDrip for about three (3) years.

39. Licensee believed that iDrip's business model complied with the laws of the states in which they were located. Licensee stated that he was even assured by iDrip's CEO that iDrip's business model was acceptable in most states; however, he later learned it was not.

40. Licensee stated that he was made aware of the MBON's investigation of iDrip in early 2023.

41. Licensee testified that he hired a Compliance Consultant Firm and the consultant determined that iDrip's operations did not comply with the laws or regulations in the state of Mississippi. The consultant also found that iDrip's operations did not comply with legal requirements in several other states.

42. After determining that iDrip's practice model violated the laws in multiple states, including Mississippi, Licensee testified that he stopped iDrip and all services associated with it in March 2023. As of October 2023, the business was voluntarily terminated.

43. Licensee also testified that he was contacted by the Board in August 2023. He met with the Board for a regulatory compliance meeting, after learning of its investigation, in September 2023.

44. Licensee testified that he never meant to put anyone at risk by running afoul of any state statutes.

45. Licensee explained that while "standing orders" are used in an Emergency Medical Services ("EMS") context, he was unaware that "standing orders" for IV hydration stations constituted the practice of medicine in the state of Mississippi. He also stated that he did not believe any Mississippi patients were harmed by iDrip.

46. Licensee admitted that he did not perform any patients' examinations or chart reviews for any of the Mississippi patients, yet his name was used to order the medications.

47. Licensee also testified that he had not met the iDrip practitioners in the state of Mississippi. However, he asserted that he was nonetheless available twenty-four (24) hours a day, seven (7) days a week if there were any questions.

48. Licensee stated that he did not intentionally violate Mississippi laws or the Board's rules and regulations. Licensee also stated that he did not intend to practice IV therapy or practice medicine in the state of Mississippi in the future.

DETERMINATIONS

49. Based on the clear and convincing evidence and testimony presented, Licensee is found guilty of Count I of the Affidavit, i.e., guilty of prescribing, administering, or dispensing any legend drug without a good faith prior examination and medical indication, in violation of Miss. Code Ann., Section 73-25-29(13).

50. Based on the clear and convincing evidence and testimony presented, Licensee is found guilty of Count II of the Affidavit, i.e., guilty of unprofessional misconduct, which includes being guilty of knowingly performing any act which in any way assists an unlicensed person to practice medicine, in violation Miss. Code Ann., Sections 73-25-29(8)(b) and 73-25-83(a).

51. Based on the clear and convincing evidence and testimony presented, Licensee is found guilty of Count III of the Affidavit, i.e., guilty of unprofessional conduct, which includes, but is not limited to, being guilty of any dishonorable or unethical conduct likely to deceive defraud or harm the public, in violation of Miss. Code Ann., Sections 73-25-29(8)(d) and 73-25-83(a).

Based upon the above Findings of Fact and Conclusions of Law, and clear and convincing evidence, the Board finds the following Order to be appropriate under the circumstances.

ORDER

IT IS THEREFORE ORDERED that Licensee is suspended from the practice of medicine in the state of Mississippi for six (6) months with an immediate stay, with the start date of the suspension on December 8, 2023.

IT IS THEREFORE ORDERED that Licensee complete AMA, Category 1 Board-approved Continuing Medical Education ("CME") courses in professionalism and ethics within one year of the date of the signature of this Order.

IT IS FURTHER ORDERED that Licensee shall reimburse the Board for all costs incurred in relation to the pending matter pursuant to Miss. Code Ann., Section 73-25-30, as amended. Licensee shall be advised of the total assessment, not to exceed $10,000 by written notification, and shall tender to the Board a certified check or money order within forty (40) days after the date the assessment is mailed to Licensee's current mailing address.

IT IS FURTHER ORDERED that this decision and opinion is a final order of the Board and is conclusive evidence of the matters described herein.

IT IS FURTHER ORDERED that the Determination and Order shall be public record. It may be shared with other licensing boards (in and out of state), and the public, and may be reported to the appropriate entities as required or authorized by state and/or federal law or guidelines. This action shall be spread upon the Minutes of the Board as its official act and deed.

SO ORDERED this the 9th day of May 2024.

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

BY: Michelle Y. Owens

MICHELLE Y. OWENS, M.D.,
PRESIDENT