

Public

STATE OF NEW YORK DEPARTMENT OF HEALTH  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

DAVID WILBIRT, M.D.  
CO-05-06-3140-A

COMMISSIONER'S  
SUMMARY  
ORDER

TO: DAVID WILBIRT, M.D.  
Redacted Address

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction, the Arizona Medical Board, (hereinafter "Arizona Board") has made a finding substantially equivalent to a finding that the practice of medicine by **DAVID WILBIRT, M.D.**, Respondent, licensed to practice medicine in New York state on December 3, 1976, by license number 129464, in that jurisdiction, constitutes an imminent danger to the health, safety, and welfare of its people, as is more fully set forth in documents of the State of Arizona, attached hereto, as "Appendix A," and made a part hereof.

It is, therefore:

**ORDERED**, pursuant to New York Public Health Law Section 230(12)(b), that effective immediately, **DAVID WILBIRT, M.D.**, Respondent, shall not practice medicine in New York state or in any other jurisdiction where that practice is dependent on a valid New York state license to practice medicine.

Any practice of medicine in the state of New York or in any other jurisdiction where that practice is dependent on a valid New York state license to practice medicine in violation of this Commissioner's Summary Order shall constitute Professional Misconduct within the meaning of New York Education Law §6530 and may constitute unauthorized medical practice, a felony defined by New York Education Law §6512.

This Order shall remain in effect until the final conclusion of a hearing that shall commence within thirty (30) days after the final conclusion of the disciplinary proceeding in the state of Arizona. The hearing will be held pursuant to the provisions of New York Public Health Law §230, and New York State Administrative Procedure Act §301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct, on a date and at a location to be set forth in a written Notice of Referral Proceeding, together with a Statement of Charges, to be provided to Respondent after the final conclusion of the Arizona proceeding. Said written Notice may be provided in person, by mail or by other means. If Respondent wishes to be provided said written notice at an address other than those set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth on this Order and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

**Respondent shall notify the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299 via Certified Mail, Return Receipt Requested, of the final conclusion of the Arizona proceeding, immediately upon such conclusion.**

**THESE PROCEEDINGS MAY RESULT IN A  
DETERMINATION THAT YOUR LICENSE TO  
PRACTICE MEDICINE IN NEW YORK STATE BE  
REVOKED OR SUSPENDED AND/OR THAT YOU  
BE FINED OR SUBJECT TO OTHER SANCTIONS  
SET FORTH IN NEW YORK PUBLIC HEALTH LAW  
SECTION 230-A. YOU ARE URGED TO OBTAIN AN  
ATTORNEY FOR THIS MATTER.**

DATE: Albany, New York

*December 14*, 2005

Redacted Signature

  
ANTONIA C. NOVELLO, M.D., M.P.H, Dr. P. H.  
Commissioner

Inquires should be addressed to:

Robert Bogan  
Associate Counsel  
Office of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180  
(518) 402-0828

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2  
3 In the Matter of

4 **DAVID A. WILBIRT, M.D.**

5 Holder of License No. 9920  
6 For the Practice of Allopathic Medicine  
7 In the State of Arizona.

**Case No: MD-03-0749, MD-05-0173  
MD-05-0798, MD-05-0888**

**INTERIM FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
FOR SUMMARY SUSPENSION OF  
LICENSE**

8 **INTRODUCTION**

9 The above-captioned matter came on for discussion before the Arizona Medical  
10 Board on August 30, 2005. After reviewing relevant information and deliberating, the  
11 Board considered proceedings for a summary action against the license of David A.  
12 Wilbert, M.D. ("Respondent"). Having considered the information in the matter and being  
13 fully advised, the Board enters the following Interim Findings of Fact, Conclusions of Law  
14 and Order for Summary Suspension of License, pending formal hearing or other Board  
15 action. A.R.S. § 32-1451(D).

16 **INTERIM FINDINGS OF FACT**

17 1. The Board is the duly constituted authority for licensing and regulating the  
18 practice of allopathic medicine in the State of Arizona.

19 2. Respondent is the holder of License No. 9920 for the practice of allopathic  
20 medicine in the State of Arizona.

21 **Case Number MD-03-0749**

22 3. The Board initiated case number MD-03-0749 on August 4, 2003 after a  
23 pharmacist reported that Respondent was prescribing excessive amounts of Norco and  
24 OxyContin to patient RC. RC received 110 OxyContin 40mg tablets from three  
25 prescriptions filled between July 8, 2003 and July 29, 2003. RC also received 240 Norco

1 10 mg tablets from four prescriptions filled between July 20, 2003 and July 31, 2003. In  
2 his response to the allegations, Respondent reported he was alerted to the potential  
3 danger of Acetaminophen toxicity by a pharmacy technician. Respondent also indicated  
4 he questioned the veracity of the numerous prescriptions presented by RC.

5 4. Further investigation revealed Respondent had also prescribed excessive  
6 amounts of Norco and Effexor to patient MK. MK received 150 Norco 10 mg tablets from  
7 two prescriptions filled between July 17, 2003 and July 25, 2003 and 150 Effexor tablets  
8 filled between July 17, 2003 and July 18, 2003. MK also received 1250 Norco 10 mg  
9 tablets filled at five different pharmacies between October 26, 2003 and January 6, 2004.

10 **Case Number MD-05-0173**

11 5. The Board initiated case number MD-05-0173 on March 19, 2005 after  
12 receiving an anonymous complaint alleging Respondent was prescribing medication for  
13 non-therapeutic purposes. Respondent prescribed Arimidex, Oxandrolone, Descarioate,  
14 Stanozolol, Cypionate, Novarel, Dyazide, Triamterene, Tamoxifen, Winstrol, Nondrolone,  
15 and Cytomel. These prescriptions were filled by an out-of-state pharmacy for use by a  
16 bodybuilder. Respondent has prescribed many of these drugs to clientele of a company  
17 called Bodybuilders.

18 **Case Number MD-05-0798**

19 6. The Board initiated case number MD-05-0798 on August 8, 2005 after  
20 receiving a newspaper article describing a federal Drug Enforcement Administration  
21 ("DEA") investigation of Respondent. The article stated that Respondent had written  
22 thousands of illegal prescriptions over the past four years for steroids and human growth  
23 hormones for body builders and that the DEA confiscated three plastic bags of marijuana  
24 from Respondent's home.

**MD-05-0888**

1  
2       7.     On April 13, 2005 Respondent entered into an Interim Consent Agreement  
3 for a Non-Disciplinary Practice Limitation ("Consent Agreement") after he suffered a stroke  
4 on February 16, 2005 and experienced subsequent cognitive impairment. The Consent  
5 Agreement prohibited Respondent from engaging in the practice of clinical medicine,  
6 including a prohibition on prescribing treatment or medications.

7       8.     The Board initiated case number MD-05-0888 on August 25, 2005 after a  
8 pharmacist reported Respondent had telephoned him on August 22, 2005 with a  
9 prescription for Xanax for patient BP. The pharmacist noted suspicions about BP and  
10 concern about drug-seeking behavior.

11       9.     On August 25, 2005 Board Staff issued a subpoena ordering Respondent to  
12 appear for an investigative interview concerning case numbers MD-03-0749, MD-05-0173,  
13 MD-05-0798 and MD-05-0888. In an August 26, 2005 letter from his counsel Respondent  
14 declined to appear for the investigative interview.

15       10.    Respondent's disregard of the voluntary Consent Agreement indicates he is  
16 unwilling to be subject to the Board's regulatory powers.

**INTERIM CONCLUSIONS OF LAW**

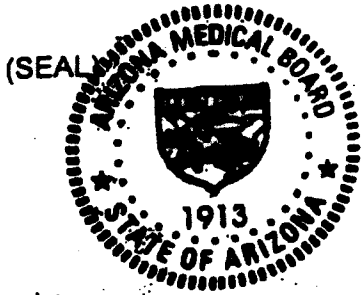
17  
18       1.     The Board possesses jurisdiction over the subject matter hereof and over  
19 Respondent, holder of License No. 9920 for the practice of allopathic medicine in the State  
20 of Arizona.

21       2.     The conduct and circumstances described above constitute unprofessional  
22 conduct pursuant to A.R.S. § 32-1401(27)(a) ("[v]iolating any federal or state laws, rules or  
23 regulations applicable to the practice of medicine;") A.R.S. § 32-1401(27)(j) ("[p]rescribing,  
24 dispensing or administering any controlled substance or prescription-only drug for other  
25 than accepted therapeutic purposes;") A.R.S. § 32-1401(27)(r) ("[v]iolating a formal order,



1 DATED this 1<sup>st</sup> day of ~~August~~ <sup>September</sup> 2005.

2 ARIZONA MEDICAL BOARD



Redacted Signature

By: \_\_\_\_\_  
TIMOTHY C. MILLER, J.D.  
Executive Director

8 ORIGINAL of the foregoing filed this  
9 2<sup>nd</sup> day of ~~August~~ 2005 with:

10 The Arizona Medical Board  
11 9545 E. Doubletree Ranch Road  
12 Scottsdale, AZ 85258

13 Executed copy of the foregoing mailed  
14 by US Certified Mail this 2<sup>nd</sup> day  
15 of ~~August~~ 2005 to:

16 David G. Derickson, P.C.  
17 3636 North Central - Suite 1050  
18 Phoenix, Arizona 85012-1941

19 Executed copy of the foregoing mailed  
20 by US Mail this 2<sup>nd</sup> day  
21 of ~~August~~ 2005 to:

22 David A. Wilbirt, M.D.  
23 Address of Record

24 Dean Brekke  
25 Assistant Attorney General  
Arizona Attorney General's Office  
1275 West Washington, CIV/LES  
Phoenix, AZ 85007

Redacted Signature

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