

IN THE CIRCUIT COURT OF CRAIGHEAD COUNTY, ARKANSAS
CIVIL DIVISION

DAVID DIFFINE, M.D.

PETITIONER

v. CASE NO. _____

THE ARKANSAS STATE MEDICAL BOARD;
EDWARD GARNER, Chairman of the Arkansas
State Medical Board, JOSHUA E ROLLER M.D.,
ELIZABETH ANDERSON, BRIAN L MCGEE M.D.,
C. WESLEY CLUCK JR M.D.,
KENNETH B. JONES M.D., MARK CAMP,
SARAH C. BONE M.D., MICHEAL J. BIRRER M.D.,
BRAD A. THOMAS M.D., CHRISTOPHER D. DAVIS P.A.,
RODNEY GRIFFIN, M.D., TIMOTHY C. PADEN, M.D.,
DON R. PHILLIPS, M.D., in their
Official capacities as officers and members of the Arkansas
State Medical Board

RESPONDENTS

PETITION FOR REVIEW OF ADMINISTRATIVE ADJUDICATION

Comes now, Petitioner, David Diffine, M.D., pro se, for his Petition for Review of
Administrative Adjudication, states and is a resident of Craighead County, Arkansas:

1. Petitioner, David Diffine, M.D., is a medical doctor, licensed to practice medicine in
the State of Arkansas and is a resident of Craighead County, Arkansas.

2. Respondent, Arkansas State Medical Board (hereinafter the "Board"), has licensing
authority over physicians who practice in the State of Arkansas pursuant to Ark. Code Ann. §
17-95409. Members and officers of the Board exercise this authority in their official capacities.

3. Petitioner files his Petition for Review of Administrative Adjudication pursuant to the
Arkansas Administrative Procedure Act (hereinafter the "Act"), found at Ark. Code Ann. § 25-
15-201, et. seq. 1.

4. This Court has jurisdiction over this matter and venue is proper.

5. On August 8, 2025, the Board conducted an administrative adjudication, under Ark. Code Ann. § 25-15-212. The Act defines adjudication as “an agency process for the formulation of an order.” Ark. Code Ann. § 25-15-202(1)(A).

6. On September 3, 2025, the Chairman of the Board, Ward Gardner, signed the Board’s written decision (hereinafter the “Order”).

7. The Order falls short of the requirements found in Ark. Code Ann. § 25-12-210(b)(2) with regard to findings of fact and associated conclusions of law. Further the disciplinary action taken was not in measure with the alleged violations of the Medical Practice Act, as this was the Petitioner’s first finding of violation of the Medical Practice Act and subsequently his first final disciplinary action.

8. Additionally, the Board prejudiced the hearing by releasing evidence of the investigation to the public prior to the hearing and FINAL disciplinary action in violation of the Arkansas Freedom of Information Act. Ark. Code Ann. § 25-19-105(b)(6) and the Medical Practice Act. Ark. Code Ann. § 17-95-107. Furthermore the video evidence entered as evidence by the Board was intimate material of a revenge porn nature and it’s use as evidence and its release to the public prior to the hearing is by definition a criminal act under Ark. Code Ann. § 5-26-314 as well as a violation of the FOIA due to its intimate nature providing for an exemption under Ark Code Ann. § 25-19-105(b)(2),(b)(6).

9. Also, evidence from an earlier complaint in 2024 that was resolved without disciplinary action, was entered as evidence by the Board and released to the public also in violation of Arkansas FOIA statutes regarding exempt records. Ark. Code Ann § 25-19-105 and Arkansas Medical Practice Act Confidentiality Rule stating that complaints remain confidential if the

Board takes no action. See Ark Code Ann § 17-95-107.

10. The prior complaint was related to the petitioners spiritual/religious beliefs and expression of those beliefs online. These beliefs were not brought up by the petitioner in his response to the investigation of this current complaint/case. Additionally, the Petitioner was directly asked by a board member in the hearing if he was still practicing his spiritual beliefs which is a violation of the First and Fourteenth Amendment of the United States Constitution, and the Arkansas Religious Freedom Restoration Act. Ark. Code Ann § 16-123-401 et seq. It would also violate the Arkansas Administrative Procedure Act which states hearings must be fair and impartial. Ark. Code Ann. § 25-15-208, § 25-15-213.

11. Lastly, the Petitioner's legal counsel of record prior to the hearing removed himself after the Petitioner refused to surrender his license as counseled by his legal counsel after he received information on "good word" that the Board had already decided what findings and actions would be rendered prior to the hearing, presentation of evidence, and witness testimony constituting an ex parte communications violation of Ark. Code Ann. § 25-15-209(a)(b)(c). Several of these issues were presented to the Board in writing prior to the hearing.

12. Further, the Board never served Petitioner "either personally or by mail with a copy of the decision or order." Ark. Code Ann. § 25-12-210(c). The law requires strict compliance of procedure, especially when the decision of the Board affects the livelihood of the Petitioner and his ability to practice medicine.

13. The Act provides "In cases of adjudication, any person, except an inmate under sentence to the custody of the Division of Correction, who considers himself or herself injured in his or her person, business, or property by final agency action shall be entitled to judicial review of the action under this subchapter." Ark. Code Ann. § 25-15-212(a).

14. Petitioner considers himself injured by final agency action. This petition is filed within thirty days of September 3, 2025; however, in violation of the Act, he has yet to be served with the Order.

15. Pursuant to Ark. Code Ann. § 25-15-212(g), Petitioner requests to present written briefs and oral argument.

16. The substantial rights of Petitioner have been prejudiced because the Board's findings, inferences, conclusions, and decisions are:

- a. In violation of constitutional or statutory provisions;
- b. In excess of the agency's authority;
- c. Made upon unlawful procedure;
- d. Affected by other error or law;
- e. Not supported by substantial evidence of record;
- f. Arbitrary, capricious, and characterized by an abuse of discretion, or
- g. a combination of the foregoing.

Ark. Code Ann. § 25-15-212(h)(1)-(6).

17. As such, Petitioner requests this Honorable Court reverse the decision of the Board and fully restore his medical license without restriction.

WHEREFORE, Petitioner, David Diffine, MD, petitions the court to review the Arkansas Medical Board's administrative adjudication; reverse the Order of the Arkansas State Medical board of September 3, 2025, fully restoring his medical license; and set aside its findings, inferences, conclusions, and decisions that Petitioner violated the Arkansas Medical Practices Act and any rules promulgated thereunder; and for all other just and equitable relief to which he may be entitled.

Respectfully submitted,

DAVID DIFFINE, MD

By: **/S/ DAVID DIFFINE, MD**

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