

BEFORE THE ARIZONA MEDICAL BOARD

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In the Matter of
EARL A. SURWIT, M.D.
Holder of License No. 11111
For the Practice of Allopathic Medicine
In the State of Arizona.

Case No. MD-08-1123A

**CONSENT AGREEMENT FOR
LICENSE REACTIVATION AND
PROBATION**

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Earl A. Surwit, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges that he has the right to consult with legal counsel regarding this matter.

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement or any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

1 5. This Consent Agreement does not constitute a dismissal or resolution of other
2 matters currently pending before the Board, if any, and does not constitute any waiver,
3 express or implied, of the Board's statutory authority or jurisdiction regarding any other
4 pending or future investigation, action or proceeding. The acceptance of this Consent
5 Agreement does not preclude any other agency, subdivision or officer of this State from
6 instituting other civil or criminal proceedings with respect to the conduct that is the subject
7 of this Consent Agreement.

8 6. All admissions made by Respondent are solely for final disposition of this
9 matter and any subsequent related administrative proceedings or civil litigation involving
10 the Board and Respondent. Therefore, said admissions by Respondent are not intended
11 or made for any other use, such as in the context of another state or federal government
12 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
13 any other state or federal court.

14 7. Upon signing this agreement, and returning this document (or a copy thereof)
15 to the Board's Executive Director, Respondent may not revoke the acceptance of the
16 Consent Agreement. Respondent may not make any modifications to the document. Any
17 modifications to this original document are ineffective and void unless mutually approved
18 by the parties.

19 8. If the Board does not adopt this Consent Agreement, Respondent will not
20 assert as a defense that the Board's consideration of this Consent Agreement constitutes
21 bias, prejudice, prejudgment or other similar defense.

22 9. This Consent Agreement, once approved and signed, is a public record that
23 will be publicly disseminated as a formal action of the Board and will be reported to the
24 National Practitioner Data Bank and to the Arizona Medical Board's website.
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10. If any part of the Consent Agreement is later declared void or otherwise unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force and effect.

11. Any violation of this Consent Agreement constitutes unprofessional conduct and may result in disciplinary action. A.R.S. § 32-1401(27)(r) ("Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter") and 32-1451.

12. Respondent has read and understands the conditions of probation.


EARL A. SURWIT, M.D.

DATED: 10/29/08

FINDINGS OF FACT

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1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 11111 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-08-1123A after receiving a request from Respondent for reactivation of his license and participation in the Board's Monitored Aftercare Program (MAP).

4. Respondent previously participated in MAP from 1989 through 1992. On March 5, 2008, the Board received a complaint alleging Respondent had relapsed. On March 14, 2008, Respondent met with Board Staff and the Board's Addiction Medicine Consultant who recommended that Respondent cease practicing and undergo a chemical dependency evaluation at an approved facility.

5. On March 20, 2008, Respondent entered into an Interim Consent Agreement for Practice Limitation prohibiting him from practicing clinical medicine or any medicine involving direct patient care and from prescribing any form of treatment including prescription medications. Respondent was also ordered to undergo biological fluid and hair testing and to participate in a residential evaluation that included substance abuse, psychiatric, neurological and neuropsychological evaluations. The biological fluid and hair tests were positive for opiates and Oxycodone.

6. On March 26, 2008, Respondent participated in a chemical dependency evaluation at an evaluation facility. At the conclusion of the evaluation, Respondent notified the evaluation facility that he had relapsed. The evaluator's diagnosis was Sedative-Hypnotic Dependence; Opioid Abuse (by history); Alcohol Dependence, in sustained full remission; Cannabis Abuse (by history); Bipolar II Disorder and

1 Depression. It was the facility's recommendation that Respondent enter a ninety day
2 residential treatment facility and that he was not safe to practice medicine. On May 6,
3 2008, Respondent entered into a License Inactivation with Cause and Order inactivating
4 his license with cause due to his chemical dependency relapse.

5 7. Respondent successfully completed long-term treatment at a residential
6 treatment facility and was discharged on August 23, 2008. Respondent's diagnosis was
7 benzodiazepine, opioid, marijuana (in remission) and alcohol dependence (in remission)
8 and bipolar disorder type II, in partial remission. It was recommended that Respondent
9 was safe to return to the practice of medicine.

10 8. Board staff recommends that Respondent's license be reactivated and he
11 be placed in MAP under a final Board Order.

12 **CONCLUSIONS OF LAW**

13 1. The Arizona Medical Board possesses jurisdiction over the subject matter
14 hereof and over Respondent.

15 2. The conduct and circumstances described above constitute unprofessional
16 conduct pursuant to A.R.S. § 32-1401(27)(f) ("[h]abitual intemperance in the use of
17 alcohol or habitual substance abuse.").

18 **ORDER**

19 IT IS HEREBY ORDERED that:

20 1. Respondent's license is reactivated.

21 2. Respondent is placed on Probation for five years with the following terms
22 and conditions:

23 a. Respondent shall submit quarterly declarations under penalty of perjury on
24 forms provided by the Board, stating whether there has been compliance with all
25 conditions of probation. The declarations shall be submitted on or before the 15th of

1 March, June, September and December of each year, beginning on or before September,
2 2008.

3 **b.1. Participation.** Respondent shall promptly enroll in and participate in the
4 Board's program for the treatment and rehabilitation of physicians who are impaired by
5 alcohol or drug abuse ("MAP")¹. Respondent's participation in MAP may be unilaterally
6 terminated with or without cause at the Board's discretion at any time after the issuance of
7 this Order.

8 **2. Relapse Prevention Group.** Respondent shall attend MAP's relapse
9 prevention group therapy sessions one time per week for the duration of this Order, unless
10 excused by the MAP relapse prevention group facilitator for good cause such as illness or
11 vacation. Respondent shall instruct the MAP relapse prevention group facilitators to
12 release to Board Staff, upon request, all records relating to Respondent's treatment, and
13 to submit monthly reports to Board Staff regarding attendance and progress. The reports
14 shall be submitted on or before the 10th day of each month.

15 **3. 12 Step or Self-Help Group Meetings.** Respondent shall attend
16 ninety 12-step meetings or other self-help group meetings appropriate for substance
17 abuse and approved by Board Staff, for a period of ninety days beginning not later than
18 either (a) the first day following Respondent's discharge from chemical dependency
19 treatment or (b) the date of this Order.

20 **4.** Following completion of the ninety meetings in ninety days,
21 Respondent shall participate in a 12-step recovery program or other self-help program
22 appropriate for substance abuse as recommended by the MAP Director and approved by
23 Board Staff. Respondent shall attend a minimum of three 12-step or other self-help
24

25 ¹ Respondent's MAP participation is retroactive to October 2, 2008.

1 program meetings per week for a total of twelve per month. Two of the twelve meetings
 2 must be Caduceus meetings. Respondent must maintain a log of all self-help meetings.
 3 Board Staff will provide the log to Respondent.

4 **5. Board-Staff Approved Primary Care Physician.** Respondent shall
 5 promptly obtain a primary care physician and shall submit the name of the physician to
 6 Board Staff in writing for approval. The Board-approved primary care physician ("PCP")
 7 shall be in charge of providing and coordinating Respondent's medical care and treatment.
 8 Except in an *Emergency*, Respondent shall obtain medical care and treatment only from
 9 the PCP and from health care providers to whom the PCP refers Respondent.
 10 Respondent shall request that the PCP document all referrals in the medical record.
 11 Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and
 12 provide a copy of this Order the PCP. Respondent shall also inform all other health care
 13 providers who provide medical care or treatment that Respondent is participating in MAP.

14 a. "*Emergency*" means a serious accident or sudden illness that, if not
 15 treated immediately, may result in a long-term medical problem or loss of life.

16 **6. Medication.** Except in an *Emergency*, Respondent shall take no
 17 *Medication* unless the PCP or other health care provider to whom the PCP refers
 18 Respondent prescribes the *Medication*. Respondent shall not self-prescribe any
 19 *Medication*.

20 a. "*Medication*" means a prescription-only drug, controlled substance,
 21 and over-the counter preparation, other than plain aspirin, plain ibuprofen,
 22 and plain acetaminophen.

23 **7.** If a controlled substance is prescribed, dispensed, or is administered
 24 to Respondent by any person other than PCP, Respondent shall notify the PCP in writing
 25 within 48 hours and notify the MAP Director immediately. The notification shall contain all

1 information required for the medication log entry specified in paragraph 8. Respondent
2 shall request that the notification be made a part of the medical record. This paragraph
3 does not authorize Respondent to take any *Medication* other than in accordance with
4 paragraph 6.

5 **8. Medication Log.** Respondent shall maintain a current legible log of
6 all *Medication* taken by or administered to Respondent, and shall make the log available to
7 the Board Staff upon request. For *Medication* (other than controlled substances) taken on
8 an on-going basis, Respondent may comply with this paragraph by logging the first and
9 last administration of the *Medication* and all changes in dosage or frequency. The log, at
10 a minimum, shall include the following:

- 11 a. Name and dosage of *Medication* taken or administered;
- 12 b. Date taken or administered;
- 13 c. Name of prescribing or administering physician;
- 14 d. Reason *Medication* was prescribed or administered.

15 This paragraph does not authorize Respondent to take any *Medication* other than in
16 accordance with paragraph 6.

17 **9. No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol
18 or any food or other substance containing poppy seeds or alcohol.

19 **10. Biological Fluid Collection.** During all times that Respondent is
20 physically present in the State of Arizona and such other times as Board Staff may direct,
21 Respondent shall promptly comply with requests from Board Staff or MAP Director to
22 submit to witnessed biological fluid collection. If Respondent is directed to contact an
23 automated telephone message system to determine when to provide a specimen,
24 Respondent shall do so within the hours specified by Board Staff. For the purposes of this
25 paragraph, in the case of an in-person request, "promptly comply" means "immediately."

1 In the case of a telephonic request, "promptly comply" means that, except for good cause
2 shown, Respondent shall appear and submit to specimen collection not later than two
3 hours after telephonic notice to appear is given. The Board in its sole discretion shall
4 determine good cause.

5 11. Respondent shall provide Board Staff in writing with one telephone
6 number that shall be used to contact Respondent on a 24 hour per day/seven day per
7 week basis to submit to biological fluid collection. For the purposes of this section,
8 telephonic notice shall be deemed given at the time a message to appear is left at the
9 contact telephone number provided by Respondent. Respondent authorizes any person
10 or organization conducting tests on the collected samples to provide testing results to the
11 Board and the MAP Director.

12 12. Respondent shall cooperate with collection site personnel regarding
13 biological fluid collection. Repeated complaints from collection site personnel regarding
14 Respondent's lack of cooperation regarding collection may be grounds for termination
15 from MAP.

16 13. Out of State Travel and/or Unavailability at Home or Office
17 Telephone Number. Respondent shall provide Board Staff at least three business days
18 advance written notice of any plans to be away from office or home when such absence
19 would prohibit Respondent from responding to an order to provide a biological fluid
20 specimen or from responding to communications from the Board. The notice shall state
21 the reason for the intended absence from home or office, and shall provide a telephone
22 number that may be used to contact Respondent.

23 14. Payment for Services. Respondent shall pay for all costs,
24 including personnel and contractor costs, associated with participating in MAP at
25 time service is rendered, or within 30 days of each invoice sent to Respondent.

1 **15. Examination.** Respondent shall submit to mental, physical, and
2 medical competency examinations at such times and under such conditions as directed by
3 the Board to assist the Board in monitoring Respondent's ability to safely perform as a
4 physician and Respondent's compliance with the terms of this Order.

5 **16. Treatment.** Respondent shall submit to all medical, substance
6 abuse, and mental health care and treatment ordered by the Board.

7 **17. Obey All Laws.** Respondent shall obey all federal, state and local
8 laws, and all rules governing the practice of medicine in the State of Arizona.

9 **18. Interviews.** Respondent shall appear in person before the Board and
10 its Staff and MAP committees for interviews upon request, upon reasonable notice.

11 **19. Address and Phone Changes, Notice.** Respondent shall
12 immediately notify the Board in writing of any change in office or home addresses and
13 telephone numbers.

14 **20. Relapse, Violation.** In the event of chemical dependency relapse by
15 Respondent or Respondent's use of drugs or alcohol in violation of the Order,
16 Respondent's license shall be **REVOKED**. Respondent agrees to waive formal hearing
17 on the revocation. In the alternative, Respondent may **SURRENDER HIS LICENSE** if he
18 agrees in writing to being impaired by alcohol or drug abuse. A.R.S. § 32-1452(G).

19 **21. Notice Requirements.**
20 **(A)** Respondent shall immediately provide a copy of this Order to all
21 employers and all hospitals and free standing surgery centers where Respondent currently
22 has privileges. Within 30 days of the date of this Order, Respondent shall provide the
23 Board with a signed statement of compliance with this notification requirement. Upon any
24 change in employer or upon the granting of privileges at additional hospitals and free
25 standing surgery centers, Respondent shall provide the employer, hospital or free standing

1 surgery center with a copy of this Order. Within 30 days of a change in employer or upon
2 the granting of privileges at additional hospitals and free standing surgery centers.
3 Respondent shall provide the Board with a signed statement of compliance with this
4 notification requirement.

5 (B) Respondent is further required to notify, in writing, all employers,
6 hospitals and free standing surgery centers where Respondent currently has or in the
7 future gains employment or privileges, of a chemical dependency relapse, use of drugs or
8 alcohol in violation of this Order and/or entry into a treatment program. Within seven days
9 of any of these events Respondent shall provide the Board written confirmation of
10 compliance with this notification requirement.

11 22. Public Record. This Order is a public record.

12 23. Out-of-State. In the event Respondent resides or practices as a
13 physician in a state other than Arizona, Respondent shall participate in the rehabilitation
14 program sponsored by that state's medical licensing authority or medical society.
15 Respondent shall cause the monitoring state's program to provide written reports to the
16 Board regarding Respondent's attendance, participation, and monitoring. The reports
17 shall be due quarterly on or before the 15th day of March, June, September, and
18 December of each year, until the Board terminates this requirement in writing. The
19 monitoring state's program and Respondent shall immediately notify the Board if
20 Respondent: a) is non-compliant with any aspect of the monitoring requirements; b)
21 relapses; c) tests positive for controlled substances; d) has low specific gravity urine drug
22 test(s), missed and/or late urine drug tests, or otherwise rejected urine drug tests; and e)
23 is required to undergo any additional treatment.

24 24. This Order supersedes all previous consent agreements and
25 stipulations between the Board and/or the Executive Director and Respondent.

1 25. The Board retains jurisdiction and may initiate new action based upon
2 any violation of this Order.

3 26. Respondent shall immediately obtain a treating psychiatrist and
4 psychotherapist approved by Board Staff and shall remain in treatment with the
5 psychiatrist and psychotherapist until further order of the Executive Director. Respondent
6 shall instruct the psychiatrist and psychotherapist to release to Board Staff, upon request,
7 all records relating to Respondent's treatment, and to submit quarterly written reports to
8 Board Staff regarding diagnosis, prognosis, medications, and recommendations for
9 continuing care and treatment of Respondent. The reports shall be submitted on or before
10 the 15th day of March, June, September and December of each year, beginning on or
11 before March, 2009.

12 3. This Order is the final disposition of case number MD-08-1123A.
13 DATED AND EFFECTIVE this 4th day of DEC, 2008.



ARIZONA MEDICAL BOARD

By [Signature]
Lisa S. Wynn
Executive Director

17 ORIGINAL of the foregoing filed
18 this 4th day of December 2008 with:

19 Arizona Medical Board
20 9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

21 EXECUTED COPY of the foregoing mailed
22 this 4th day of December 2008 to:

23 Earl A. Surwit, M.D.
24 Address of Record
[Signature]
25 Investigational Review