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BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

Board Case No. MD-11A-28212-MDX

TIN T. WIN, M.D.,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
(Decree of Censure, Practice Restriction
and Probation)**

Holder of License No. 28212
for the Practice of Allopathic Medicine
In the State of Arizona.

On June 6, 2012, this matter came before the Arizona Medical Board ("Board") for consideration of the Administrative Law Judge (ALJ) Diane Mihalsky's proposed Findings of Fact, Conclusions of Law and Recommended Order. Tin T. Win, M.D., ("Respondent") appeared before the Board on her own behalf; Assistant Attorney General Anne Froedge, represented the State. Christopher Munns with the Solicitor General's Section of the Attorney General's Office, was available to provide independent legal advice to the Board.

The Board, having considered the ALJ's decision and the entire record in this matter, hereby issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Arizona Medical Board ("the Board") is the duly constituted authority for licensing and regulating the practice of allopathic medicine in the State of Arizona.
2. The Board licensed Tin T. Win, M.D. ("Dr. Win" or "Respondent") to practice as an allopathic physician in Arizona. Dr. Win specializes in neurology and practices in Lake Havasu City, Arizona.
3. On August 20, 2003, the Board issued a non-disciplinary letter of concern to Dr. Win for her poor documentation of a patient's history and lack of effort to obtain prior medical records in her care of a patient in Case No. MD-02-0502A.¹

¹ See the Board's Ex. 15.

1 4. On June 4, 2009, the Board's Executive Director accepted Dr. Win's entry
2 into a Consent Agreement to resolve another matter, Case No. MD-08-0581A.² In the
3 Consent Agreement, Dr. Win admitted that she committed unprofessional conduct
4 pursuant to A.R.S. § 32-1401(27)(e) ("[f]ailing or refusing to maintain adequate records on
5 a patient") and A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might be
6 harmful or dangerous to the health of the patient or the public") by deviating from the
7 standard of care in her treatment of patient RD, in relevant part as follows:

7 7. The standard of care when a patient presents for
8 pain management, adjustment of intrathecal pump, and
9 systemic medications requires the physician to obtain an
10 appropriate pain history, pertinent general medical history,
11 physical exam and to review medical records; to discontinue
12 intrathecal Baclofen by gradually tapering the dose to avoid
13 withdrawal syndrome; to reinstate intrathecal Baclofen when
14 the syndrome does occur; and to follow rational
15 pharmacological principles when making adjustments to
16 intrathecal infusion medications and dosages and when adding
17 oral opioids. Additionally, prior to initiating Methadone the
18 standard of care requires a physician to evaluate the patient for
19 risk factors for cardiac output prolongation that may predispose
20 to cardiac complications from Methadone.

15 8. Respondent deviated from the standard of care
16 because she did not obtain an appropriate pain history or
17 review RD's medical records; she did not appropriately
18 discontinue the intrathecal Baclofen or reinstate intrathecal
19 Baclofen when RD experienced withdrawal symptoms; and she
20 did not follow rational pharmacological principles when she
21 made adjustments to RD's intrathecal infusion medications and
22 dosages and added oral opioids. Additionally, she did not
23 evaluate RD for risk factors for cardiac output prior to initiating
24 Methadone.

21 9. RD suffered Baclofen withdrawal syndrome
22 following abrupt discontinuation of intrathecal Baclofen.
23 Respiratory depression and aspiration may have been
24 associated with the acute increases in multiple opioids. Non-
25 fatal or fatal cardiac dysrhythmia may have occurred due to

25 ² Dr. Win signed the Consent Agreement on or about April 23, 2009.

1 introduction of oral Methadone. Respondent's abrupt
2 discontinuation of intrathecal Baclofen, her failure to recognize
3 early signs of intrathecal Baclofen withdrawal syndrome, and
4 the inadequacy of the medical records could have resulted in
RD suffering delirium, seizure, disseminated intravascular
coagulation, multiple organ failure, brain damage, or death.

5 10. A physician is required to maintain adequate
6 legible medical records containing, at a minimum, sufficient
7 information to identify the patient, support the diagnosis, justify
8 the treatment, accurately document the results, indicate advice
9 and cautionary warnings provided to the patient and provide
10 sufficient information for another practitioner to assume
11 continuity of the patient's care at any point in the course of
12 treatment. A.R.S. § 32-1401(2). Respondent's records were
13 inadequate because she did not obtain past medical records,
14 she adjusted intrathecal medications without documenting
15 detailed information, she continually prescribed medications
16 without indication, and she did not document which
17 medications she discontinued.³

18 5. The Consent Agreement in Case No. MD-08-0581A placed Dr. Win on
19 probation for a period of one year and required Dr. Win to complete 15-20 hours of Board
20 Staff pre-approved Category I Continuing Medical Education ("CME") in prescribing
21 controlled substances and 15-20 hours of CME in medical record-keeping, in addition to
22 the CME hours required for biennial renewal of her license.

23 6. Dr. Win successfully completed the terms of her probation in Case No. MD-
24 08-0581A.

25 7. On or about March 30, 2011, the Board received a complaint from patient DJ
against Dr. Win alleging among other things that Dr. Win inappropriately prescribed
Methadone to treat DJ's chronic pain.

8. As part of the Board's investigation, it assigned outside Medical Consultant J.
Michael Powers, M.D. to review the complaint and to render an opinion to the Board about
whether Dr. Win deviated from the standard of care in her treatment of DJ. After Dr.

³ The Board's Ex. 14 at 5-6, ll. 14-22 (footnote added).

1 Powers issued his Medical Consultant Report and Summary, Dr. Win responded to the
2 report, and Dr. Powers responded to Dr. Win's response. The Board's Staff Investigational
3 Review Committee ("SIRC") thereafter reviewed available documentation on the complaint.
4 On or about July 28, 2011, the SIRC recommended that the Board enter a Decree of
5 Censure and Practice Restriction against Dr. Win to prohibit her from prescribing controlled
6 substances for a period of five years.⁴

6 9. After Dr. Win declined to enter into a second Consent Agreement to resolve
7 DJ's complaint, she elected to undergo a formal interview by the Board. Dr. Win's formal
8 interview was scheduled at the Board's meeting on October 5, 2011.

8 10. Dr. Win failed to appear for the scheduled formal interview. Although Dr. Win
9 claimed that an injury to her ankle prevented her appearance, the Board did not excuse Dr.
10 Win's failure to appear because she provided only an x-ray to substantiate the injury and
11 did not provide a diagnosis from her physician.

12 11. On October 5, 2011, the Board held an emergency teleconference to
13 consider the SIRC's recommendation. On October 5, 2011, the Board entered Interim
14 Findings of Fact, Conclusions of Law, and an order summarily restricting Dr. Win's license
15 to prohibit her from prescribing, administering, or dispensing any controlled substances.⁵

15 12. On or about October 7, 2011, Dr. Win sent a memorandum to the Arizona
16 Attorney General to protest DJ's "Wrongful Accusation" and the Board's "Unjustifiable
17 Punishment."⁶ Thereafter, the Board referred the matter to the Office of Administrative
18 Hearings ("the OAH"), an independent agency, for an evidentiary hearing.

18 13. On October 20, 2011, the Board issued a Complaint and Notice of Hearing,
19 charging Dr. Win with unprofessional conduct pursuant to A.R.S. § 32-1401(27)(e) and (q)
20 by deviating from the standard of care in her treatment of patient DJ.

24 ⁴ See the Board's Ex. 9.

25 ⁵ See the Board's Ex. 11.

⁶ See the Board's Ex. 12.

1 20. Dr. Win's January 3, 2011 progress note did not report that DJ complained of
2 a headache. DJ's complaint to the Board mentioned a history of low back pain,
3 fibromyalgia, neuropathy in her feet and legs, and left knee pain, but did not mention
4 headache.

5 21. On January 3, 2011, Dr. Win did not possess any of DJ's past medical
6 records to review, with the exception of an MRI that DJ brought to the appointment that
7 showed minimal degenerative disk disease.

8 22. Dr. Win's impressions of DJ on January 3, 2011, were "Radiculopathy L-
9 spine" and "Analgesic Rebound Headache."⁹

10 23. On January 3, 2011, Dr. Win prescribed to DJ Methadone 10 mg tid (90
11 tablets/month), Demerol 50 mg qid prn (120 tablets/month), and Soma 350 mg tid prn (90
12 tablets/month).¹⁰

13 24. Dr. Win did not require DJ to sign a narcotic contract or to submit to a urine
14 drug test to detect whether any controlled substances were in her system.

15 25. Dr. Win obtained DJ's medical records from Washington pursuant to her
16 release and authorization on January 4, 2011.

17 26. Dr. Win's medical record reflects that on January 6, 2011, DJ's husband
18 called Dr. Win's office and reported that the prescribed medications were making DJ weak,
19 shaky, and confused, and she was not sleeping. Dr. Win's record reflects that she advised
20 DJ to stop taking the Demerol and Soma, but to continue taking the Methadone.¹¹

21 27. DJ in her complaint to the Board stated that she took the Methadone, but in a
22 low dose, and that before January 6, 2011, she had only taken two tablets of the Demerol
23 and one tablet of the Soma.¹²

24 ⁹ *Id.* at 6.

25 ¹⁰ *Id.*

¹¹ See the Board's Ex. 3 at 9.

¹² See the Board's Ex. 1 at 1.

1 28. On February 2, 2011, DJ returned to Dr. Win for a follow up office visit.¹³ Dr.
2 Win's progress note reported DJ "had 2 migraines, and the headache was better."¹⁴ Dr.
3 Win continued DJ on Methadone 30 mg and increased her Effexor to 225 mg.

4 29. Dr. Win's diagnoses of DJ on the February 2, 2011 progress note were the
5 same diagnoses as on the January 3, 2011 progress note, "Radiculopathy L-spine" and
6 "Analgesic Rebound Headache."

7 30. According to DJ's complaint, during the week of February 14, 2011, she
8 started experiencing altered consciousness. DJ reported that one night at 3:00 a.m., her
9 husband awoke and found her dressed, and when he asked what she was doing, she said
10 that she was meeting a group of friends to go bungee jumping.¹⁵

11 31. DJ reported that during the first part of the week of February 14, 2011, she
12 called Dr. Win's office to report the severe problems that she was having with the
13 prescribed medications, and that she was told that she needed to come in for Dr. Win to
14 examine her on February 21, 2011.¹⁶ DJ reported that she stopped taking all medications
15 that Dr. Win had prescribed after she called Dr. Win's office.

16 32. Although Dr. Win's records do not include a record of a telephone call from
17 DJ during the week of February 14, 2011, her records showed a missed appointment for
18 DJ on February 21, 2011.¹⁷

19 33. On the morning of February 21, 2011, DJ's husband took her to the
20 emergency room at La Paz Regional Hospital. DJ reported on her complaint that she had
21 fallen into a deep depression, was experiencing anxiety attacks, was not eating or drinking,
22 and was screaming at her husband to take her home.¹⁸ The emergency room record
23

24 ¹³ Although the Board's complaint and Dr. Powers' consultant's report state that DJ's
25 second office visit was on February 3, 2011, see the Board's Ex. 5 at 1, the date on Dr.
Win's medical record and on DJ's complaint was February 2, 2011, see the Board's Ex. 1
at 1 and Ex. 3 at 7. A one-day discrepancy is not material to the charged violations in
this case.

¹⁴ The Board's Ex. 3 at 7.

¹⁵ See the Board's Ex. 1 at 2.

¹⁶ See the Board's Ex. 1 at 1, Ex. 10 at 2.

¹⁷ See the Board's Ex. 3 at 11.

¹⁸ See the Board's Ex. 1 at 2.

1 noted that DJ had minimal eye contact and a whining tone to her voice.¹⁹ A urine drug
2 screen was negative for opiates.²⁰ DJ's diagnosis at the emergency room was "Drug
3 withdrawal."²¹

Evidence on the Standard of Care

4 34. Dr. Powers has been licensed as an allopathic physician in Arizona since
5 1977, and practices adult neurology. Dr. Powers testified that neurology concerns patients
6 who have symptoms that relate to the central nervous system, meaning brain, spinal cord,
7 nerves, or muscles. In practice, neurologists treat patients who have symptoms, such as
8 headaches or pain in their arms, legs, neck, or back. Dr. Powers is certified by the
9 American Board of Psychiatry and Neurology.

10 35. Dr. Win graduated from medical school in Burma in 1976, and moved to the
11 United States in 1989 for a medical residency. Dr. Win practiced neurology in Alabama
12 and Kansas before she moved to Lake Havasu in 2002. Although Dr. Win is not board
13 certified, she is board eligible.

14 36. Dr. Powers opined that the standard of care requires a physician to be
15 familiar with the drugs that she prescribes and that if a physician prescribes a narcotic to
16 treat a patient's pain, she should be familiar with the narcotic's potential interactions with
17 other drugs that the patient is taking and the narcotic's potential effect on the patient's
18 other health conditions.

19 37. Dr. Powers testified that Methadone and Demerol are not the standard drugs
20 for initiation of narcotic therapy for a patient who is narcotic naïve, meaning the patient has
21 no narcotics in her system. Dr. Powers testified that because narcotic drugs are addicting,
22 patients become habituated to such drugs and can handle higher doses. Dr. Powers
23 testified that the significance of the absence of narcotic drugs in a patient's system was
24 that a smaller dose of a narcotic would have a more profound effect on the patient than the
25 drug would have had if she already had a narcotic drug in her system.

¹⁹ See the Board's Ex. 4 at 4.

²⁰ See the Board's Ex. 4 at 7.

²¹ *Id.* at 5.

1 38. Dr. Powers testified that Methadone is a synthetic narcotic that was
2 developed primarily for treating long-term drug abuse. Dr. Powers testified that Methadone
3 is a long-acting narcotic that builds up in a patient's system, even if the dosage is not
4 increased, and that the half-life of Methadone, which means how long it takes to get half of
5 a drug out of the patient's system, may be from half a day to up to a week, depending on
6 the patient. Dr. Powers testified that Demerol is a short-acting synthetic narcotic that is
infrequently used, but may be prescribed in hospitals for acute pain.

7 39. Dr. Powers testified that if a patient has a reaction to Methadone, it will be in
8 their system a long time. Therefore, typically, physicians start patients on a shorter acting
9 narcotic to determine their response and then transition them to Methadone if appropriate.

10 40. Dr. Powers testified that if a physician determines to prescribe Methadone to
11 a narcotic naïve patient, the drug should be started on an appropriately low dose. Dr.
12 Powers testified that Methadone is available in a 5 mg dose, half of what Dr. Win
prescribed.

13 41. Dr. Powers testified that Soma is a sedative or muscle relaxant that was used
14 before Valium came to be commonly used. Zolpidem is also a sedative/hypnotic used to
15 help patients sleep. Dr. Powers testified that because narcotics and sedatives both
16 depress respiration, the more combined drugs that are prescribed, the greater the risk of a
17 patient having respiratory depression and dying. Therefore, the standard of care requires
18 a physician to use caution in prescribing narcotics in combination with sedatives.

19 42. Dr. Powers testified that if Dr. Win felt there was an extreme extenuating
20 circumstance that required her to prescribe a combination of narcotic and sedative drugs,
21 she should have documented the circumstance in the medical record.

22 43. Dr. Powers testified that according to the January 3, 2011 progress note, DJ
23 complained of pain in her back and neck, and a history of headaches. Dr. Powers testified
24 that when a patient complains of global pain, a physician is required to identify the specific
25 sources of the pain and to provide diagnoses to establish those pain sources before she
prescribes narcotics for chronic, noncancer pain.

1 44. Dr. Powers testified that the basis for Dr. Win's diagnosis of an analgesic
2 rebound headache was unclear, but that prescribing narcotics and sedatives to a patient
3 with rebound headaches likely would make them worse.

4 45. Dr. Powers testified that before a physician prescribes narcotics to a patient
5 to treat chronic pain, she should obtain a detailed history of any issues with depression,
6 including suicide attempts, or substance abuse. Dr. Powers testified that because Effexor
7 is an anti-depressant, he would have expected a narrative on Dr. Win's January 3, 2011
8 progress note addressing DJ's depression and stating whether she had ever
9 contemplated suicide before Dr. Win prescribed narcotics to DJ. Dr. Powers testified that
10 the physician should have the patient's past medical records to determine what had been
11 tried and the patient's experiences with narcotics before prescribing them.

12 46. Dr. Powers testified that although Dr. Win increased DJ's Effexor dosage on
13 February 2, 2011, the progress note for that date did not discuss DJ's depression or the
14 reason for the increased dosage.

15 47. Dr. Powers testified that before a physician prescribes narcotics to a patient,
16 she should require the patient to sign a narcotic contract and to undergo testing to see if
17 the patient had drugs in her system. Dr. Powers testified that he imposes such
18 requirements on patients who are winter visitors, although he acknowledged that he had a
19 patient whom he did not require to sign a contract. Dr. Powers testified that he made an
20 exception for the patient because he was in contact with the patient's primary care
21 provider in Utah, with whom the patient had a contract, and the patient was a 70-year-old
22 devout Mormon woman who had been taking narcotics for many years.

23 48. Dr. Powers testified that before a physician prescribes narcotics to a patient,
24 she should go to the Arizona Pharmacy Board website for controlled substance
25 prescriptions to make sure that the patient is not obtaining narcotics from multiple
providers.

 49. Dr. Powers testified that because Methadone is metabolized in the liver, it
should not be prescribed to a patient with a liver problem because with the naturally long
half-life of methadone, it would amplify the problem. Dr. Powers testified that because Dr.
Win's record did not document the cause or extent of DJ's liver issue, he could not

1 determine with certainty whether Dr. Win's prescription of Methadone to DJ in light of her
2 liver problem provided another departure from the standard of care.

3 50. Dr. Powers testified that although DJ's husband reported to Dr. Win on
4 January 6, 2011, that she had difficulty with the medications, Dr. Win's medical record did
5 not include any reference to DJ's difficulties. Dr. Powers testified that the standard of care
6 required Dr. Win to discuss DJ's difficulties and whether any alternatives to Methadone
7 were considered, but the medical record did not reference any such discussion.

8 51. Dr. Powers' initial Medical Consultant Report and Summary criticized Dr.
9 Win for prescribing 225 mg Effexor because that dose did not exist. Dr. Win provided
10 evidence from the internet that Effexor does in fact exist in that dose, and Dr. Powers
11 retracted that criticism at the hearing.²²

12 52. Dr. Powers testified that he understood that after the January 3, 2011 office
13 visit, DJ took Methadone sparingly, but that after the February 2, 2011 office visit, DJ
14 started taking Methadone in the full prescribed dosage. Dr. Powers testified that DJ's
15 reported confusion and delirium during the week of February 14, 2011, were symptoms of
16 narcotic toxicity.

17 53. Dr. Powers testified that he understood that DJ stopped taking Methadone
18 after the incident during the week of February 14, 2011. Dr. Powers testified that the
19 symptoms of narcotic withdrawal include tremulousness, nausea, and anxiety, and that he
20 agreed with the emergency room physician's diagnosis that DJ was going through narcotic
21 withdrawal on February 21, 2011.

22 54. Dr. Powers' Medical Consultant Report and Summary noted as a factor in
23 mitigation that "[m]anagement of chronic pain patients is challenging."²³

24 55. Dr. Win testified that she prescribed Methadone because DJ complained
25 about financial problems and Methadone was less expensive than other pain medications.

56. Dr. Win testified that she prescribed Methadone to DJ in the lowest possible
dose.

²² See Court Reporter's Confidential Transcript at 135, ll. 7-11, 18-24.

²³ The Board's Ex. 5 at 2.

1 57. Dr. Win testified that she prescribed three medications because Quartzsite is
2 a three-hour drive from Lake Havasu City, she had explained the medications to DJ, and
3 she had instructed DJ to call if she had any problems.

4 58. Dr. Win testified that narcotic naïve means that a patient has not taken
5 narcotics in the past and does not know how they will affect her. Dr. Win testified that DJ
6 had some experience in the effect that narcotics would have on her because she had
7 taken narcotics in the past and therefore, that she was not narcotic naïve.

8 59. Dr. Win testified that she checked the Arizona Pharmacy Board's website
9 and determined that DJ had not obtained any controlled substances in Arizona. The
10 printout from the search was not included in DJ's medical record.

11 60. Dr. Win acknowledged at the hearing that her records for DJ could have
12 been more complete. Dr. Win testified that because when she talks to a patient, she looks
13 into the patient's eyes so that they understand what she is saying, she talks more than she
14 writes and her medical records do not include everything that she says to a patient. Dr.
15 Win testified that she was trained in Burma to focus on the patient, but in the United
16 States, the focus is on the documents.

17 61. Dr. Win testified that on February 2, 2011, DJ was improved, very satisfied
18 with her care, and was very content that she did not have to take a lot of medicine. Dr.
19 Win noted that DJ did not file a complaint to the Board until after she complained about the
20 bill that Dr. Win's office sent her.

21 62. Dr. Win testified that her first choice to treat pain from fibromyalgia is to
22 advise the patients to exercise and lose weight, and that she has exercise machines set
23 up in her office. Dr. Win testified that she advised DJ that she needed to exercise and to
24 lose weight, but acknowledged that she did not document that advice in the medical
25 record.

 63. Dr. Win testified that she has a sign in her office to inform patients that she
will not prescribe OxyContin, and she only gives patients a prescription for a 30-day
supply of narcotics.

 64. Dr. Win testified that the restriction that the Board imposed on her privilege to
prescribe or administer controlled substances has imposed a hardship on her patients

1 because she is the only doctor who prescribes medication to fill the Medtronic pump in
2 Lake Havasu City.

3 65. In rebuttal, Ms. Steger testified that in another case in which the Respondent
4 physician alleged that a practice restriction would leave his patients without care
5 alternatives, the Board had conducted an informal survey of physicians practicing pain
6 management in Lake Havasu City and Mohave County. Ms. Steger testified that the
7 Board found that other physicians practiced pain management in Dr. Win's geographical
8 vicinity.

9 CONCLUSIONS OF LAW

10 1. The Board has jurisdiction to consider this complaint and to discipline Dr.
11 Win's license to practice allopathic medicine in Arizona.²⁴

12 2. The Board bears the burden of proof to establish cause to discipline Dr.
13 Win's license to practice allopathic medicine in Arizona by a preponderance of the
14 evidence.²⁵ Dr. Win bears the burden to establish affirmative defenses and factors in
15 mitigation of the penalty by the same evidentiary standard.²⁶

16 3. "A preponderance of the evidence is such proof as convinces the trier of fact
17 that the contention is more probably true than not."²⁷

18 4. The Board established that its October 5, 2011 Interim Findings of Fact,
19 Conclusions of Law and Order for Summary Restriction of License was justified.
20 Regardless of whether Dr. Win in fact injured her ankle or should have been excused from
21 appearing for the scheduled formal interview, the similarities of the circumstances of DJ's
22 complaint to the circumstances of RD's previous complaint in Case No. MD-08-0581A
23 indicated that Dr. Win could have a persistent problem in prescribing and documenting
24 narcotic drugs. The Board reasonably concluded that the protection of the public required
25 restriction of Dr. Win's ability to prescribe controlled substances until the Board determined
the merits of DJ's complaint.

23 ²⁴ See A.R.S. § 32-1451.

24 ²⁵ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); *see also Vazanno v.*
Superior Court, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

25 ²⁶ See A.A.C. R2-19-119(B)(2).

²⁷ Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 5. The Board established that Dr. Win departed from the standard of care and
2 committed unprofessional conduct pursuant to A.R.S. § 32-1401(27)(q) (“[a]ny conduct or
3 practice that is or might be harmful or dangerous to the health of the patient or the public”)
4 in the following respects: (1) Prescribing Methadone, Demerol, and Soma to DJ, even
5 though she was already taking Effexor, Lyrica, and Zolpidem, and was not taking any
6 narcotic at that time; (2) Failing to appropriately manage DJ’s prescriptions when she
7 reported adverse side effects on January 6, 2011, and on or about February 14, 2011.²⁸

8 6. The Board established that DJ actually suffered harm caused by Dr. Win’s
9 prescription of Methadone when DJ experienced symptoms of narcotic toxicity on or about
10 February 14, 2011. Although the Board established that DJ was experiencing narcotic
11 withdrawal on February 21, 2011, Dr. Win did not advise DJ to discontinue Methadone.

12 7. The Board established that Dr. Win failed to maintain an adequate record for
13 DJ as defined by A.R.S. § 32-1401(2)²⁹ and committed unprofessional conduct pursuant
14 to A.R.S. § 32-1401(27)(e) (“[f]ailing or refusing to maintain adequate records on a
15 patient”) in the following respects: (1) Failing to document any direct response to DJ’s
16 reports of adverse side effects on January 6, 2011, and on or about February 14, 2011; (2)
17 Failing to document the basis of the diagnosis of an analgesic rebound headache; and (3)
18 Failing to document DJ’s history of depression and the reason for the increased Effexor
19 dosage on February 2, 2011.³⁰

20 ²⁸ Although Dr. Powers seemed to testify that Dr. Win’s treatment of DJ deviated from
21 the standard of care in other respects, the Administrative Law Judge only makes findings
22 on the deviations that were noticed in the Board’s Complaint and Notice of Hearing.

23 ²⁹ A.R.S. § 32-1401(2) provides as follows:

24 "Adequate records" means legible medical records containing,
25 at a minimum, sufficient information to identify the patient,
support the diagnosis, justify the treatment, accurately
document the results, indicate advice and cautionary warnings
provided to the patient and provide sufficient information for
another practitioner to assume continuity of the patient's care
at any point in the course of treatment.

³⁰ Although Dr. Powers seemed to testify that Dr. Win’s medical record for DJ deviated
from the requirements of A.R.S. § 32-1401(2) in other respects, the Administrative Law
Judge only makes findings on the deviations that were noticed in the Board’s Complaint
and Notice of Hearing.

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3. Probation

Respondent is placed on probation for **three years** or until such time as she has completed **1 full year** of consecutive, successful chart reviews as specified below, with the following terms and conditions:

a. Respondent shall, within 30 days of the effective date of this Order, enter into a contract with a board approved monitoring program to provide all monitoring services, including monitoring of the Practice Restriction and chart reviews. Respondent shall pay all costs of monitoring requirements and services.

b. At such time as the Practice Restriction is lifted, the board approved monitoring program will conduct quarterly chart reviews for the remainder of the probationary period and report results to the Board. Respondent shall pay the expenses of the monitors and all chart reviews and fully cooperate with any requests made by the monitoring program in conducting the chart reviews.

c. Obey All Laws

Respondent shall obey all state, federal and local laws, all rules governing the practice of medicine in Arizona, and remain in full compliance with any court ordered criminal probation, payments and other orders.

d. Tolling

In the event Respondent should leave Arizona to reside or practice outside the State or for any reason should Respondent stop practicing medicine in Arizona, Respondent shall notify the Executive

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Director in writing within ten days of departure and return or the dates of non-practice within Arizona. Non-practice is defined as any period of time exceeding thirty days during which Respondent is not engaging in the practice of medicine. Periods of temporary or permanent residence or practice outside Arizona or of non-practice within Arizona, will not apply to the reduction of the probationary period.

4. This Order is the final disposition of case numbers MD-11-0471A.

5. If Respondent violates this Order the Board may take further disciplinary action against her license after affording Dr. Win notice and an opportunity to be heard.

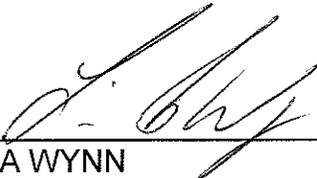
RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that she has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

DATED this 7th day of June, 2012.

THE ARIZONA MEDICAL BOARD

By 
LISA WYNN
Executive Director

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ORIGINAL of the foregoing filed this
7th day of June, 2012 with:

Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

COPY OF THE FOREGOING FILED
this 7th day of June, 2012 with:
Cliff J. Vanell, Director
Office of Administrative Hearings
1400 W. Washington, Ste 101
Phoenix, AZ 85007

Executed copy of the foregoing
mailed by U.S. Mail this
7th day of June, 2012 to:

Tin T. Win, M.D.
Address of Record

Anne Froedge
Assistant Attorney General
Office of the Attorney General
CIV/LES
1275 W. Washington
Phoenix, AZ 85007

Mary Baker
AF:yfl - #2714946