BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **JERRY W. BAINS, M.D.** Holder of License No. 5639 For the Practice of Allopathic Medicine In the State of Arizona	Case No. MD-10-0792A **ORDER FOR LETTER OF REPRIMAND AND CONSENT TO SAME**

Jerry W. Bains, M.D. ("Respondent") elects to permanently waive any right to a hearing and appeal with respect to this Order for Letter of Reprimand; admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of this Order by the Board.

FINDINGS OF FACT

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 5639 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-10-0792A after receiving a complaint from a pharmacist regarding Respondent's care and treatment of a 29 year-old male patient ("SB") alleging inappropriate prescribing.

4. The complaint related to a prescription for Methadone 10 mg written March 18, 2010, by Respondent for SB. The pharmacist noted that the dosing was consistent with that for methadone treatment, however the prescription was written as an indication for pain. The pharmacist then declined to fill the prescription clarifying that it must be filled only at an addiction facility.

5. On February 18, 2010, SB was first seen by Respondent with a ten year history of substance abuse. SB reported unsuccessful attempts to quit and stated that he wanted to be free of the addiction. A physical exam and health inquiry was negative for other problems. SB also reported that he suffered from depression and that he was not in treatment, but self-medicated with

drugs. Respondent's initial treatment plan was for methadone maintenance via daily methadone dosing. According to Respondent, SB was to begin on February 18, 2010 with a 30 mg dose of methadone, followed by 40 mg on February 19, 2010 and 45 mg on February 20, 2010. On March 11, 2010, Respondent documented that SB complained of vomiting several times a day, and that he advised SB to eat before dosing to reduce side effect.

6. On March 12, 2010, SB was noted to be better, but was still vomiting; however, Respondent noted that there was no vomiting prior to SB taking oral opiates. Therefore, Respondent planned for a trial dose of methadone tablets and methadone 50 mg per day was prescribed for three days with follow up scheduled. On March 18, 2010, Respondent noted that SB was not sick on the pill form of methadone, but was vomiting when the liquid form of methadone was initiated. Respondent concluded that SB was not able to tolerate the liquid form and ordered that methadone be continued in pill form, and a prescription for methadone 10 mg #20 was given. SB was to return on March 22, 2010; however, the March 18, 2010 progress note was the last note in the chart provided for review. In his response to the Board, Respondent did not address the complaint regarding the apparent prescription of methadone "for pain" and SB being sent to a retail pharmacy to fill his prescription. Additionally, Respondent did not document the rationale for and safety assessment to provide unsupervised dosing to SB at this point in treatment.

7. The standard of care for a patient enrolled in a methadone maintenance program requires a physician to provide the patient with prescriptions that are only to be dispensed by pharmacies approved by appropriate regulatory authorities.

8. Respondent deviated from the standard of care by prescribing methadone tablets to SB, who was enrolled in a methadone maintenance program, and having SB present to retail pharmacy to fill his prescription.

9. The standard of care when prescribing unsupervised opioid agonist medication for a

patient newly enrolled in a methadone maintenance program requires a physician to prescribe the mediation in accordance with the Guidelines for the Accreditation of Opioid Treatment Programs ("Guidelines").

10. Respondent deviated from the standard of care by providing SB with unsupervised opioid agonist medication for longer than the Guidelines recommend without giving a clinical rationale and safety assessment.

11. Respondent could have caused SB potential harm because of the opportunity for diversion of opioid agonist treatment medications to the illicit market.

12. A physician is required to maintain adequate legible medical records containing, 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. A.R.S. §32-1401(2). Respondent's medical records were inadequate because Respondent wrote two prescriptions for opioid agonist for the treatment of pain. However, Respondent failed to document the need to treat SB for a painful condition in the medical record. Additionally, there was no notation in the chart detailing the rationale for and safety assessment to provide unsupervised methadone dosing to SB.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent.

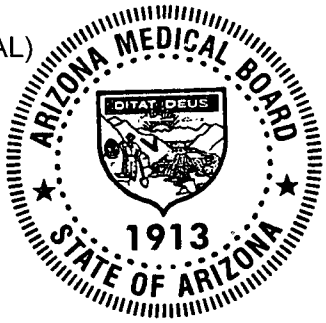
2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401 (27)(e) ("[f]ailing or refusing to maintain adequate records on a patient"); and A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public").

ORDER

IT IS HEREBY ORDERED THAT Respondent is issued a Letter of Reprimand.

DATED AND EFFECTIVE this 8TH day of DECEMBER, 2010.

ARIZONA MEDICAL BOARD

(SEAL) 

By _____
Lisa S. Wynn
Executive Director

CONSENT TO ENTRY OF ORDER

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

2. Respondent acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

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

4. The Order is not effective until approved by the Board and signed by its Executive Director.

5. All admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and

Respondent. Therefore, said admissions by Respondent are not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or any other state or federal court.

6. Upon signing this agreement, and returning this document (or a copy thereof) to the Board's Executive Director, Respondent may not revoke the consent to the entry of the Order. Respondent may not make any modifications to the document. Any modifications to this original document are ineffective and void unless mutually approved by the parties.

7. This Order is a public record that will be publicly disseminated as a formal disciplinary action of the Board and will be reported to the National Practitioner's Data Bank and on the Board's web site as a disciplinary action.

8. If any part of the Order is later declared void or otherwise unenforceable, the remainder of the Order in its entirety shall remain in force and effect.

9. If the Board does not adopt this Order, Respondent will not assert as a defense that the Board's consideration of the Order constitutes bias, prejudice, prejudgment or other similar defense.

10. Any violation of this Order constitutes unprofessional conduct and may result in disciplinary action pursuant to A.R.S. § § 32-1401(27)(r) ("[v]iolating 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.

JERRY W. BAINS, M.D. DATED: 28 Oct 2010

EXECUTED COPY of the foregoing mailed this 28 day of November, 2010 to:

Jerry W. Bains, M.D.
ADDRESS OF RECORD

ORIGINAL of the foregoing filed
this 9th day of January 2010 with:

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

Chris Bangs
Arizona Medical Board Staff