BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **DALE N. PAYNE, M.D.** Holder of License No. 28025 For the Practice of Allopathic Medicine In the State of Arizona.	Case No. MD-13-1285A **ORDER FOR LETTER OF REPRIMAND AND PROBATION AND CONSENT TO THE SAME**

Dale N. Payne, M.D. ("Respondent"), elects to permanently waive any right to a hearing and appeal with respect to this Order for Letter of Reprimand and Probation; 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 28025 for the practice of allopathic medicine in the State of Arizona.

3. On January 14, 2011, Respondent entered into a confidential Stipulated Rehabilitation Agreement ("SRA") after successfully completing treatment for substance abuse.

4. The Board initiated case number MD-13-1285A after receiving notification from the Physician Health Program ("PHP") that on November 4, 2013, Respondent's urine drug screen was positive for EtG, a metabolite of alcohol.

5. PHP contacted Respondent regarding the drug screen results and he denied drinking alcohol. Because Respondent denied consuming alcohol, PHP requested that he undergo a PEth test. Respondent subsequently contacted PHP and explained that he attended a wedding and drank some punch that he was told did not contain alcohol. PHP

indicated that they did not find Respondent's explanation credible, and recommended that he undergo a comprehensive evaluation to determine the proper course of treatment and monitoring.

6. On November 12, 2013, Respondent was ordered to undergo an intensive chemical dependency evaluation, which he successfully completed on November 27, 2013. The results of the evaluation determined that Respondent had relapsed with the use of alcohol and that he required a minimum of 30 days of residential chemical dependency treatment. PHP added that they concurred with the results of the evaluation and made the determination that Respondent was unsafe to practice medicine at that time. Pursuant to the terms of Respondent's SRA, he entered into an Interim Order for Practice Restriction on January 6, 2014.

7. On February 7, 2014, Respondent successfully completed treatment and was deemed safe to practice.

8. On March 4, 2014, Respondent entered into an Interim Order for PHP participation, and the Interim Order for Practice Restriction was vacated. Board staff reports that Respondent remains compliant with the terms and conditions of his monitoring agreement.

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)(f) ("[h]abitual intemperance in the use of alcohol or habitual substance abuse.").

3. The conduct and circumstances described above constitute unprofessional conduct 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 the provisions of this chapter.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand.

2. Respondent's license is placed on Probation for **five years** and is subject to his continued participation[1] in the Board's Physician Health Program ("PHP") and compliance with the following terms and conditions:

3. Respondent shall not consume alcohol or any food or other substance containing poppy seeds or alcohol.

4. Respondent shall not take any illegal drugs or mood altering medications.

5. Respondent shall attend the PHP's relapse prevention group therapy sessions one time per week for the duration of this Order, unless excused by the relapse prevention group facilitator for good cause. Individual relapse therapy may be substituted for one or more of the group therapy sessions, if PHP pre-approves substitution. The relapse prevention group facilitators or individual relapse prevention therapist shall submit monthly reports to the PHP regarding attendance and progress.

6. If requested by the PHP, Respondent shall attend ninety 12-step meetings or other self-help group meetings appropriate for substance abuse and approved by the PHP, for a period of ninety days. Upon completion of the ninety meetings in ninety days, Respondent shall participate in a 12-step recovery program or other self-help program appropriate for substance abuse as recommended by the PHP. Respondent shall attend a

---

[1] Respondent's PHP participation is retroactive to March 4, 2014.

minimum of three 12-step or other self-help program meetings per week. Two meetings per month must be Caduceus meetings. Respondent must maintain a log of all self-help meetings.

7. Respondent shall promptly obtain a primary care physician ("PCP") and shall submit the name of the physician to the PHP in writing for approval. The approved PCP shall be in charge of providing and coordinating Respondent's medical care and treatment. Except in an *Emergency*, Respondent shall obtain medical care and treatment only from the PCP and from health care providers to whom the PCP refers Respondent. Respondent shall promptly provide a copy of this Order to the PCP. Respondent shall also inform all other health care providers who provide medical care or treatment that Respondent is participating in PHP. "Emergency" means a serious accident or sudden illness that, if not treated immediately, may result in a long-term medical problem or loss of life.

8. All prescriptions for controlled substances shall be approved by the PHP prior to being filled except in an *Emergency*. Controlled substances prescribed and filled in an emergency shall be reported to the PHP within 48 hours. Respondent shall take no *Medication* unless the PCP or other health care provider to whom the PCP refers Respondent prescribes and the PHP approves the *Medication*. Respondent shall not self-prescribe any *Medication*. "Medication" means a prescription-only drug, controlled substance, and over-the counter preparation, other than plain aspirin, plain ibuprofen, and plain acetaminophen.

9. Respondent shall submit to random biological fluid, hair, and/or nail testing for five years from the date of this Order (as specifically directed below) to ensure compliance with PHP.

10. Respondent shall provide the PHP in writing with one telephone number that shall be used to contact Respondent on a 24 hour per day/seven day per week basis to

submit to biological fluid, hair, and/or nail testing to ensure compliance with PHP. For the purposes of this section, telephonic notice shall be deemed given at the time a message to appear is left at the contact telephone number provided by Respondent. Respondent authorizes any person or organization conducting tests on the collected samples to provide testing results to the PHP. Respondent shall comply with all requirements for biological fluid, hair, and/or nail collection. Respondent shall pay for all costs for the testing.

11. Respondent shall provide the PHP with written notice of any plans to travel out of state.

12. Respondent shall immediately notify the Board and the PHP in writing of any change in office or home addresses and telephone numbers.

13. Respondent provides full consent for the PHP to discuss the Respondent's case with the Respondent's PCP or any other health care providers to ensure compliance with PHP.

14. The relationship between the Respondent and the PHP is a direct relationship. Respondent shall not use an attorney or other intermediary to communicate with the PHP on participation and compliance issues.

15. Respondent shall be responsible for all costs, including costs associated with participating in PHP, at the time service is rendered or within 30 days of each invoice sent to the Respondent. An initial deposit of two months PHP fees is due upon entering the program. Failure to pay either the initial PHP deposit or monthly fees 60 days after invoicing will be reported to the Board by the PHP and may result in disciplinary action up to and including license revocation.

16. Respondent shall immediately provide a copy of this Order to all employers, hospitals and free standing surgery centers where Respondent currently has or in the

future gains or applies for employment or privileges. Within 30 days of the date of this Order, Respondent shall provide the PHP with a signed statement of compliance with this notification requirement. Respondent is further required to notify, in writing, all employers, hospitals and free standing surgery centers where Respondent currently has or in the future gains or applies for employment or privileges, of a chemical dependency relapse or violation of this Order.

17. In the event Respondent resides or practices in a state other than Arizona, Respondent shall participate in the rehabilitation program sponsored by that state's medical licensing authority or medical society. Respondent shall cause the monitoring state's program to provide written quarterly reports to the PHP regarding Respondent's attendance, participation, and monitoring. The monitoring state's program and Respondent shall immediately notify the PHP if Respondent is non-compliant with any aspect of the monitoring requirements or is required to undergo any additional treatment.

18. In the event of chemical dependency relapse by Respondent or Respondent's use of drugs or alcohol in violation of this Order, Respondent shall promptly enter into an Interim Consent Agreement for Practice Restriction that requires, among other things, that Respondent not practice medicine until such time as Respondent successfully completes long-term inpatient treatment for chemical dependency designated by the PHP Contractor and obtains affirmative approval from the Executive Director to return to the practice of medicine. Prior to approving Respondent's request to return to the practice of medicine, Respondent may be required to submit to witnessed biological fluid collection or undergo any combination of physical examination, psychiatric or psychological evaluation. In no respect shall the terms of this paragraph restrict the Board's authority to initiate and take disciplinary action for violation of this Order.

19. The PHP shall immediately notify the Board if Respondent is non-compliant

with any aspect of the monitoring requirements or this Order.

20. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in the State of Arizona.

21. Respondent shall appear in person before the Board and/or its staff and PHP for interviews upon request, with reasonable notice.

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

23. Prior to the termination of Probation, Respondent must submit a written request to the Board for release from the terms of this Order. Respondent's request for release will be placed on the next pending Board agenda, provided a complete submission is received by Board staff no less than 14 days prior to the Board meeting. Respondent's request for release must provide the Board with evidence establishing that he has successfully satisfied all of the terms and conditions of this Order. The Board has the sole discretion to determine whether all of the terms and conditions of this Order have been met or whether to take any other action that is consistent with its statutory and regulatory authority.

DATED AND EFFECTIVE this 5th day of February, 2015.

ARIZONA MEDICAL BOARD

By Patricia E. McSorley
Patricia E. McSorley
Interim Acting 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. 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.

11. Respondent acknowledges that, pursuant to A.R.S. § 32-2501(16), he cannot act as a supervising physician for a physician assistant while his license is on probation.

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

DALE N. PAYNE, M.D.

DATED: 1/9/15

EXECUTED COPY of the foregoing mailed
this 5th day of February, 2015 to:

Dale N. Payne, M.D.
Address of Record

Greenberg and Sucher, PC
Address of Record

ORIGINAL of the foregoing filed

this 5th day of February, 2015 with:

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

Mary Bobey
Board Staff