

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

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

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

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

20 9. This Consent Agreement, once approved and signed, is a public record that
21 will be publicly disseminated as a formal action of the Board and will be reported to the
22 National Practitioner Data Bank and to the Arizona Medical Board's website.

23 10. If any part of the Consent Agreement is later declared void or otherwise
24 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force
25 and effect.

1 2009 and there was a potential deviation only for patient WM for those portions of the
2 procedure actually performed by Respondent.

3 6. On January 21, 2009, Respondent presented for an investigational interview
4 with Board Staff and the Board's Addiction Medicine Consultant (AMC). Respondent
5 admitted to consuming alcohol on January 8, 2009 between 11:00 p.m. and 2:00 a.m. and
6 that he arrived at work at 7:00 a.m. on January 9, 2009, saw patients, and assisted in
7 surgery until staff smelled alcohol on his breath. Respondent reported that he had
8 undergone a psychiatric evaluation on January 15, 2009. The psychiatric records
9 demonstrated a diagnosis of alcohol abuse versus misuse. Following the interview,
10 Respondent was ordered to undergo a hair and urine drug screen, which was positive for
11 Ethylglucuronide. The AMC recommended that Respondent undergo a substance abuse
12 evaluation. On February 4, 2009, Respondent entered into an Interim Consent Agreement
13 for Practice Restriction prohibiting him from practicing medicine until further order of the
14 Board.

15 7. On February 10, 2009, Respondent underwent a substance abuse
16 evaluation. The evaluator opined that he was not fit to return to practice. Respondent was
17 diagnosed with alcohol dependence and it was recommended that he present for
18 immediate treatment. On March 6, 2009, Respondent entered treatment and was
19 discharged on April 2, 2009 with a diagnosis of alcohol dependence. The discharge
20 summary indicated that Respondent was safe to return to practice, but recommended he
21 participate in the Board's aftercare program. On April 17, 2009, Respondent entered into
22 an Interim Consent Agreement to participate in the Board's Monitored Aftercare Program.

23 8. The standard of care requires a physician to be free of the influence of any
24 substance, which could impair their ability to provide care in accordance with accepted
25 standards of medical treatment.

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

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

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

17 4. Following completion of the ninety meetings in ninety days,
18 Respondent shall participate in a 12-step recovery program or other self-help program
19 appropriate for substance abuse as recommended by the MAP Director and approved by
20 Board Staff. Respondent shall attend a minimum of three 12-step or other self-help
21 program meetings per week for a total of twelve per month. Two of the twelve meetings
22 must be Caduceus meetings. Respondent must maintain a log of all self-help meetings.
23 Board Staff will provide the log to Respondent.

24 5. Board-Staff Approved Primary Care Physician. Respondent shall
25 promptly obtain a primary care physician and shall submit the name of the physician to

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

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

11 6. **Medication.** Except in an *Emergency*, Respondent shall take no
12 *Medication* unless the PCP or other health care provider to whom the PCP refers
13 Respondent prescribes the *Medication*. Respondent shall not self-prescribe any
14 *Medication*.

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

18 7. If a controlled substance is prescribed, dispensed, or is administered
19 to Respondent by any person other than PCP, Respondent shall notify the PCP in writing
20 within 48 hours and notify the MAP Director immediately. The notification shall contain all
21 information required for the medication log entry specified in paragraph 8. Respondent
22 shall request that the notification be made a part of the medical record. This paragraph
23 does not authorize Respondent to take any *Medication* other than in accordance with
24 paragraph 6.

25 8. **Medication Log.** Respondent shall maintain a current legible log of

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

- 6 a. Name and dosage of *Medication* taken or administered;
- 7 b. Date taken or administered;
- 8 c. Name of prescribing or administering physician;
- 9 d. Reason *Medication* was prescribed or administered.

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

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

14 10. **Biological Fluid Collection.** During all times that Respondent is
15 physically present in the State of Arizona and such other times as Board Staff may direct,
16 Respondent shall promptly comply with requests from Board Staff or MAP Director to
17 submit to witnessed biological fluid collection. If Respondent is directed to contact an
18 automated telephone message system to determine when to provide a specimen,
19 Respondent shall do so within the hours specified by Board Staff. For the purposes of this
20 paragraph, in the case of an in-person request, "promptly comply" means "immediately."
21 In the case of a telephonic request, "promptly comply" means that, except for good cause
22 shown, Respondent shall appear and submit to specimen collection not later than two
23 hours after telephonic notice to appear is given. The Board in its sole discretion shall
24 determine good cause.

25 11. Respondent shall provide Board Staff in writing with one telephone

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

7 12. Respondent shall cooperate with collection site personnel regarding
8 biological fluid collection. Repeated complaints from collection site personnel regarding
9 Respondent's lack of cooperation regarding collection may be grounds for termination
10 from MAP.

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

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

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

25 16. **Treatment.** Respondent shall submit to all medical, substance

1 abuse, and mental health care and treatment ordered by the Board.

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

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

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

9 20. **Relapse, Violation.** In the event of chemical dependency relapse by
10 Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent
11 shall promptly enter into an Interim Consent Agreement for Practice Restriction that
12 requires, among other things, that Respondent not practice medicine until such time as
13 Respondent successfully completes long-term inpatient or residential treatment program
14 for chemical dependency designated by Board Staff and obtains affirmative approval from
15 the Board or the Executive Director to return to the practice of medicine. Prior to
16 approving Respondent's request to return to the practice of medicine, Respondent may be
17 required to submit to witnessed biological fluid collection, undergo any combination of
18 physical examination, psychiatric or psychological evaluation and/or successfully pass the
19 special purpose licensing examination or the Board may conduct interviews for the
20 purpose of assisting it in determining the ability of Respondent to safely return to the
21 practice of medicine. **In no respect shall the terms of this paragraph restrict the
22 Board's authority to initiate and take disciplinary action for violation of this Order.**

23 21. **Notice Requirements.**

24 (A) Respondent shall immediately provide a copy of this Order to all
25 employers and all hospitals and free standing surgery centers where Respondent currently

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

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

15 22. **Public Record.** This Order is a public record.

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

1 test(s), missed and/or late urine drug tests, or otherwise rejected urine drug tests; and e) is
2 required to undergo any additional treatment.

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

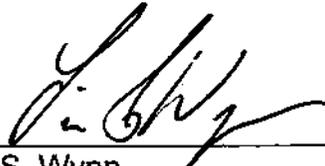
5 25. The Board retains jurisdiction and may initiate new action based upon
6 any violation of this Order.

7 3. This Order is the final disposition of case number MD-09-0120A.

8 DATED AND EFFECTIVE this 5TH day of AUGUST, 2009.



ARIZONA MEDICAL BOARD

By 
Lisa S. Wynn
Executive Director

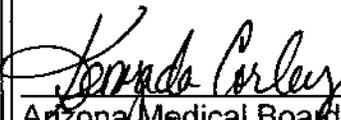
14 ORIGINAL of the foregoing filed
15 this 6th day of August, 2009 with:

16 Arizona Medical Board
17 9545 E. Doubletree Ranch Road
18 Scottsdale, AZ 85258

19 EXECUTED COPY of the foregoing mailed
20 this 6th day of August, 2009 to:

21 Grant T. Fankhauser, M.D.
22 Address of Record

23
24
25


Arizona Medical Board Staff