BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **FRED A. CHERON, M.D.** Holder of License No. 40800 For the Practice of Allopathic Medicine In the State of Arizona.	Case No. MD-14-1518A **ORDER FOR LETTER OF REPRIMAND AND PROBATION; AND CONSENT TO THE SAME**

Fred A. Cheron, M.D. ("Respondent"), elects to permanently waive any right to a hearing and appeal with respect to this Order for a 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 40800 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-14-1518A after receiving information that showed Respondent had prescribed excessive amounts of controlled substances to a member of his immediate family. Board staff also reviewed Respondent's personal medication history and found that he had been prescribed controlled substances by the same member of his immediate family.

4. Respondent was referred for a Physician Health Program ("PHP") assessment which was completed on November 20, 2014. The Board's PHP Contractor noted that Respondent did not appear to have a substance abuse disorder, but did find that psychiatric monitoring would be appropriate based on a review of Respondent's health information.

5. The PHP Contractor also recommended that Respondent enroll in and successfully complete an approved prescribing course based on Respondent's admission of inappropriately prescribing controlled substances to a member of his immediate family.

6. Respondent was offered an Interim Consent Agreement for PHP Participation on December 15, 2014 and again on January 5, 2015, but declined to enter into monitoring. As a result, Respondent was issued an Interim Order for Substance Abuse and Psychiatric Evaluations on January 22, 2015.

7. Respondent presented for the comprehensive evaluation on February 2, 2015 and was discharged on February 5, 2015. The evaluators recommended that Respondent be monitored through the PHP with psychiatric follow-up and quarterly work-place reports. It was also recommended that Respondent remain free of alcohol and all drugs with abuse and addiction liability. The PHP Contractor reviewed and approved of the evaluation findings.

8. Respondent completed 27 AMA PRA Category I Continuing Medical Education credits through the Physician Assessment and Clinical Education Program ("PACE") Physician Prescribing Course.

9. Respondent entered into an Interim Consent Agreement for participation in the PHP, effective April 15, 2015. Respondent remains in compliance with the terms and conditions of the monitoring agreement.

CONCLUSIONS OF LAW

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

b. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(e) ("Failing or refusing to maintain adequate records on a patient.").

c. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(h) ("Prescribing or dispensing controlled substances to members of the physician's immediate family.").

d. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(j) ("Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand.

2. Respondent shall promptly enroll in and participate[1] in the Board's Physician Health Program ("PHP") for a period of **two years**.

3. Respondent shall enter treatment with a PHP approved psychiatrist and shall comply with any and all treatment recommendations, including taking any and all prescribed medications. Respondent shall instruct the treating psychiatrist to submit quarterly written reports to the PHP regarding diagnosis, prognosis, current medications, recommendation for continuing care and treatment, and ability to safely practice medicine. The reports shall be submitted quarterly to the PHP, the commencement of which to be determined by the PHP. Respondent shall provide the psychiatrist with a copy of this Interim Consent Agreement. Respondent shall pay the expenses for treatment and is responsible for paying for the preparation of the quarterly reports. At the expiration of one year or anytime thereafter, Respondent may submit a written request to the PHP requesting termination of the requirement that Respondent remain in treatment with a

[1] Respondent's PHP participation shall be retroactive to April 15, 2015.

psychiatrist. The decision to terminate will be based in part upon the treating psychiatrist's recommendation for continued care and treatment.

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

5. Respondent shall not take any illegal drugs or mood altering medications unless prescribed for a legitimate therapeutic purpose.

6. 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 Respondent's Primary Care Physician ("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. "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.

7. 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.

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

9. Respondent shall successfully complete a PHP approved 36 hour alcohol/drug awareness education class.

10. 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.

11. 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.

12. 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 revocation.

13. 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 violation of this Order.

14. In the event Respondent resides or practices as a physician 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.

15. The PHP shall immediately notify the Board if Respondent is non-compliant with any aspect of the monitoring requirements or this Order.

16. In the event of the use of drugs or alcohol by Respondent in violation of this Order, Respondent shall promptly enter into an Interim Consent Agreement for Treatment at a PHP approved facility. Following the successful conclusion of treatment, Respondent shall enter into an Interim Consent Agreement for full participation in PHP. 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.

17. 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.

18. This Order supersedes any and all Consent Agreements previously entered into by Respondent and the Board regarding this matter.

19. The Board retains jurisdiction and may initiate new action against Respondent based upon any violation of this Order.

DATED AND EFFECTIVE this 5th day of August, 2016.

ARIZONA MEDICAL BOARD

By Patricia E. McSorley

Patricia E. McSorley
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 has read and understands the conditions of probation.***

Fred Cheron, M.D.
FRED A. CHERON, M.D.

DATED: June 24, 2016

EXECUTED COPY of the foregoing mailed this 5th day of August, 2016 to:

Paul Giancola, Esq.
Snell & Wilmer, LLP
400 E Van Buren
Phoenix, AZ 85004-2202
Attorney for Respondent

Greenberg and Sucher, PC
Address of Record

ORIGINAL of the foregoing filed
this 5th day of August, 2016 with:

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

Mary Bates
Board Staff