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BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of
BRIAN F. MCCABE, M.D.
Holder of License No. 23045
For the Practice of Allopathic Medicine
In the State of Arizona.

Case No. MD-14-1047A
ORDER FOR A LETTER OF REPRIMAND AND PROBATION; AND CONSENT TO THE SAME

Brian F. McCabe, 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 No. 23045 for the practice of allopathic medicine in the State of Arizona.
3. The Board initiated case number MD-14-1047A after receiving a report from a surgery center that Respondent's privileges were suspended. The surgery center alleged that Respondent "may not be properly complying with his obligations regarding the administration of a narcotic drug, Fentanyl."
4. Respondent subsequently contacted the Board to self-report that he had been abusing Fentanyl and wished to enter into treatment as soon as possible.
5. Respondent was referred for a Physician Health Program ("PHP") assessment. Respondent underwent an assessment with the Board's PHP Contractor,

1 who opined that Respondent was unsafe to practice and recommended that he undergo
2 treatment.

3 6. The information was presented to the Board's investigative staff, the Chief
4 Medical Consultant and the Lead Board Member who agreed that Respondent should
5 enter into an Interim Consent Agreement for Practice Restriction ("Interim Restriction").
6 The Interim Restriction went into effect on July 25, 2014.

7 7. Respondent underwent inpatient treatment and was successfully discharged
8 with staff approval on August 24, 2014.

9 8. On August 26, 2014, Respondent underwent a follow up assessment with
10 the PHP Contractor, who concluded that Respondent was safe to practice, provided he
11 enroll in the Board's PHP for a minimum of five years.

12 9. Board staff interviewed Respondent on September 9, 2014. During the
13 interview, Respondent admitted to obtaining Fentanyl on the street and later diverting the
14 medication directly from the surgery center.

15 10. On October 1, 2014, the Board considered Respondent's request to
16 terminate the Interim Restriction. At the time, Respondent had declined to begin a course
17 of medication (Naltrexone) recommended as part of the conditions of monitoring. The
18 Board denied Respondent's request for release from the Interim Restriction.

19 11. Respondent subsequently agreed to begin the recommended Naltrexone
20 treatment, and the Board voted to terminate the Interim Restriction on December 2, 2014
21 and to accept a proposed Interim Consent Agreement for Respondent's PHP participation.

22 12. Board staff subsequently confirmed that none of Respondent's patients
23 came into contact with used and/or tampered with vials that were manipulated by
24 Respondent at the surgery center. There were no reported complications relating to
25 patients that Respondent saw in his capacity as an anesthesiologist at the surgery center.

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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)(g) (“[U]sing controlled substances except if prescribed by another physician for use during a prescribed course of treatment.”).

4. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(j) (“[P]rescribing, 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’s license is placed on Probation for **five years**¹ and is subject to his continued participation 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. Respondent shall not take any illegal drugs or mood altering medications.

¹ Respondent’s PHP participation shall be retroactive to September 24, 2014.

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

7 5. If requested by the PHP, Respondent shall attend ninety 12-step meetings or
8 other self-help group meetings appropriate for substance abuse and approved by the
9 PHP, for a period of ninety days. Upon completion of the ninety meetings in ninety days,
10 Respondent shall participate in a 12-step recovery program or other self-help program
11 appropriate for substance abuse as recommended by the PHP. Respondent shall attend a
12 minimum of three 12-step or other self-help program meetings per week. Two meetings
13 per month must be Caduceus meetings. Respondent must maintain a log of all self-help
14 meetings.

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

25

1 7. All prescriptions for controlled substances shall be approved by the PHP
2 prior to being filled except in an Emergency. Controlled substances prescribed and filled
3 in an emergency shall be reported to the PHP within 48 hours. Respondent shall take no
4 Medication unless the PCP or other health care provider to whom the PCP refers
5 Respondent prescribes and the PHP approves the Medication. Respondent shall not self-
6 prescribe any Medication. "Medication" means a prescription-only drug, controlled
7 substance, and over-the counter preparation, other than plain aspirin, plain ibuprofen, and
8 plain acetaminophen. Respondent shall submit to random biological fluid, hair and nail
9 testing for five years from the date of this Interim Consent Agreement (as specifically
10 directed below) to ensure compliance with PHP.

11 8. Respondent shall provide the PHP in writing with one telephone number that
12 shall be used to contact Respondent on a 24 hour per day/seven day per week basis to
13 submit to biological fluid, hair and nail testing to ensure compliance with PHP. For the
14 purposes of this section, telephonic notice shall be deemed given at the time a message to
15 appear is left at the contact telephone number provided by Respondent. Respondent
16 authorizes any person or organization conducting tests on the collected samples to
17 provide testing results to the PHP. Respondent shall comply with all requirements for
18 biological fluid, hair and nail collection. Respondent shall pay for all costs for the testing.

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

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

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

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

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

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

18 15. In the event Respondent resides or practices as a physician in a state other
19 than Arizona, Respondent shall participate in the rehabilitation program sponsored by that
20 state's medical licensing authority or medical society. Respondent shall cause the
21 monitoring state's program to provide written quarterly reports to the PHP regarding
22 Respondent's attendance, participation, and monitoring. The monitoring state's program
23 and Respondent shall immediately notify the PHP if Respondent: a) is non-compliant with
24 any aspect of the monitoring requirements; b) relapses; c) tests positive for controlled
25 substances; d) has low specific gravity urine drug test(s), missed and/or late urine drug

1 tests, or otherwise rejected urine drug tests; and e) is required to undergo any additional
2 treatment.

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

5 17. In the event of chemical dependency relapse by Respondent or
6 Respondent's use of controlled substances or alcohol in violation of this Order,
7 Respondent shall promptly enter into an Interim Consent Agreement for Practice
8 Restriction that requires, among other things, that Respondent not practice medicine until
9 such time as Respondent successfully completes long-term inpatient treatment for
10 chemical dependency designated by the PHP and obtains affirmative approval from the
11 Executive Director, in consultation with the Lead Board Member and Chief Medical
12 Consultant, to return to the practice of medicine. Prior to approving Respondent's request
13 to return to the practice of medicine, Respondent may be required to undergo any
14 combination of physical examination, psychiatric or psychological evaluation. In no respect
15 shall the terms of this paragraph restrict the Board's authority to initiate and take
16 disciplinary action for violation of this Order.

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

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

21 20. This Order supersedes all previous consent agreements and stipulations
22 between the Board and/or the Executive Director and Respondent and is the final
23 resolution of this matter.

24 21. Prior to the termination of Probation, Respondent must submit a written
25 request to the Board for release from the terms of this Order. Respondent's request for

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

8 DATED AND EFFECTIVE this 8th day of February, 2016.

9 ARIZONA MEDICAL BOARD

10
11 By Patricia E. McSorley
12 Patricia E. McSorley
13 Executive Director

14 **CONSENT TO ENTRY OF ORDER**

- 15 1. Respondent has read and understands this Consent Agreement and the
16 stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Respondent
17 acknowledges he has the right to consult with legal counsel regarding this matter.
- 18 2. Respondent acknowledges and agrees that this Order is entered into freely
19 and voluntarily and that no promise was made or coercion used to induce such entry.
- 20 3. By consenting to this Order, Respondent voluntarily relinquishes any rights
21 to a hearing or judicial review in state or federal court on the matters alleged, and waives
22 any other cause of action related thereto or arising from said Order.
- 23 4. The Order is not effective until approved by the Board and signed by its
24 Executive Director.
- 25 5. All admissions made by Respondent are solely for final disposition of this
matter and any subsequent related administrative proceedings or civil litigation involving

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

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

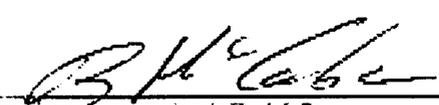
10 7. This Order is a public record that will be publicly disseminated as a formal
11 disciplinary action of the Board and will be reported to the National Practitioner's Data
12 Bank and on the Board's web site as a disciplinary action.

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

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

18 10. Any violation of this Order constitutes unprofessional conduct and may result
19 in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order, probation,
20 consent agreement or stipulation issued or entered into by the board or its executive
21 director under this chapter.") and 32-1451.

22 11. ***Respondent has read and understands the conditions of probation.***

23
24 
25 BRIAN F. MCCABE, M.D.

DATED: 12/23/15

1 EXECUTED COPY of the foregoing mailed
2 this 8th day of February, 2016 to:

3 Brian F. McCabe, M.D.
4 Address of Record

5 Greenberg and Sucher, P.C.
6 Address on file

7 ORIGINAL of the foregoing filed
8 this 8th day of February, 2016 with:

9 Arizona Medical Board
10 9545 E. Doubletree Ranch Road
11 Scottsdale, AZ 85258

12 Mary Bobb
13 Board Staff

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