

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

3 **GEORGE F. GWINN, M.D.**

4 Holder of License No. 25811
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-14-1608A

**ORDER FOR STAYED REVOCATION
AND PROBATION; AND CONSENT TO
THE SAME**

7 George F. Gwinn, M.D. ("Respondent"), elects to permanently waive any right to a
8 hearing and appeal with respect to this Order for Probation; admits the jurisdiction of the
9 Arizona Medical Board ("Board"); and consents to the entry of this Order by the Board.

10 **FINDINGS OF FACT**

11 1. The Board is the duly constituted authority for the regulation and control of
12 the practice of allopathic medicine in the State of Arizona.

13 2. Respondent is the holder of license number 25811 for the practice of
14 allopathic medicine in the State of Arizona.

15 3. The Board initiated case number MD-14-1608A after receiving notification
16 from a hospital regarding Respondent's behavioral health status pursuant to A.R.S. § 32-
17 1451(A).

18 4. According to the complaint, Respondent experienced a mental health crisis
19 that resulted in an involuntary admission to a mental health care facility for an evaluation.

20 5. Board staff subsequently opened an investigation; however, Respondent
21 failed to respond to multiple attempts to contact him, and failed to comply with a staff
22 referral to the Physician Health Program ("PHP") for initial assessment. After review of the
23 preliminary investigation results as well as Respondent's failure to respond to the Board
24 investigation, the Executive Director, Chief Medical Consultant and Lead Board Member
25 all concurred that Respondent should be offered an Interim Consent Agreement for
Practice Restriction ("ICA"). The ICA was sent to Respondent for signature on December

1 12, 2014, however Respondent did not respond to the offered ICA. As a result, the
2 Executive Director, with the concurrence of the Lead Board Member and Chief Medical
3 Consultant, issued an Interim Order for Assessment on December 17, 2014, requiring
4 Respondent to present to PHP for an assessment no later than 5:00 p.m. on December
5 18, 2014. Respondent did not comply with the Order.

6 6. On December 19, 2014, the Board met to consider Respondent's case and
7 voted to summarily suspend Respondent's license.

8 7. Also on December 19, 2014, the Board received a complaint from a federal
9 health facility for which Respondent provided weekly allergy clinic services alleging that
10 Respondent had arrived late for his December 18, 2014 clinic hours, was deemed unsafe
11 to practice medicine by facility staff, and sent home.

12 8. The Board also received complaints in MD-14-1616A, MD-15-0045A, MD-15-
13 0161A, MD-15-0203A, MD-15-0239A, MD-15-0259A, and MD-15-0303A all alleging that
14 Dr. Gwinn failed to respond to requests for medical records.

15 9. The matter was referred to the Office of Administrative Hearings and a
16 hearing was held in Case No: 15A-25811-MDX on February 19, 2015. Respondent failed
17 to appear and the Administrative Law Judge recommended that the Board issue an order
18 revoking Respondent's license.

19 10. The Board considered the matter at its Board meeting on April 1, 2015 and
20 voted to revoke Respondent's license.

21 11. Respondent submitted a timely motion for Review/Rehearing. Respondent
22 admitted that he had suffered a health issue and requested that the Board consider
23 reinstatement of his license with terms and conditions that would provide him with an
24 opportunity to demonstrate his safety to practice medicine.

25 12. Respondent has voluntarily contacted the Board's Physician Health Program
("PHP") to obtain a psychiatric fitness for duty evaluation from a Board approved evaluator.

1 Respondent has also indicated that he is willing to resolve the outstanding complaints
2 regarding his failure to respond to requests from his patients for medical records. Medical
3 records reviewed during the course of the investigation did not indicate that Respondent's
4 condition was the result of any drug or alcohol impairment.

5 **CONCLUSIONS OF LAW**

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

8 2. The conduct and circumstances described above constitute unprofessional
9 conduct pursuant to A.R.S. § 32-1401(27)(q) (“[a]ny conduct or practice that is or might be
10 harmful or dangerous to the health of the patient or the public.”).

11 3. The conduct and circumstances described above constitute unprofessional
12 conduct pursuant to A.R.S. § 32-1401(27)(r) (“[v]iolating a formal order, probation, consent
13 agreement or stipulation issued or entered into by the board or its executive director under
14 this chapter.”).

15 4. The conduct and circumstances described above constitute unprofessional
16 conduct pursuant to A.R.S. §§ 32-1401(27)(a) (“[v]iolating any federal or state laws, rules
17 or regulations applicable to the practice of medicine”) and 12-2293(A) (“[e]xcept as
18 provided in subsections B and C of this section, on the written request of a patient or the
19 patient's health care decision maker for access to or copies of the patient's medical
20 records and payment records, the health care provider in possession of the record shall
21 provide access to or copies of the records to the patient or the patient's health care
22 decision maker.”).

23 **ORDER**

24 IT IS HEREBY ORDERED THAT:
25

1 1. License Number 25811, issued to George F. Gwinn, M.D. for the practice of
2 allopathic medicine is REVOKED; however, the revocation is stayed provided Respondent
3 complies with the terms and conditions of probation as stated herein.

4 2. Respondent is placed on Probation for a period of 5 years with the following
5 terms and conditions:

6 a. Practice Restriction

7 Respondent's practice is restricted in that he shall not practice clinical
8 medicine, or any medicine involving direct patient care, and is prohibited from prescribing
9 any form of treatment including prescription medications, until Respondent applies to the
10 Board and receives permission to do so. Prior to requesting approval to return to practice,
11 Respondent shall complete a psychiatric evaluation by a Board approved evaluator and
12 comply with any recommendations for additional evaluations or treatment made by the
13 evaluator. Respondent shall also obtain a recommendation from the Board's PHP
14 Contractor that Respondent is safe to practice prior to requesting that the Board lift the
15 Practice Restriction. Additionally, Respondent shall provide proof to the Board's
16 satisfaction that Respondent has provided the relevant parties their medical records as
17 demanded in MD-14-1616A, MD-15-0045A, MD-15-0161A, MD-15-0203A, MD-15-0239A,
18 MD-15-0259A, and MD-15-0303A.

19 b. Monitoring

20 If further monitoring is recommended, Respondent shall enroll in the Board's
21 PHP within 5 days of the recommendation to do so. Respondent must comply with all the
22 terms and conditions of PHP monitoring including, at a minimum, the following:

23 i. Respondent shall enter treatment with a PHP approved psychiatrist
24 and/or psychotherapist and shall comply with any and all treatment
25 recommendations, including taking any and all prescribed medications.

1 Respondent shall instruct the treating psychiatrist and/or psychotherapist to
2 submit quarterly written reports to the PHP Contractor regarding diagnosis,
3 prognosis, current medications, recommendation for continuing care and
4 treatment, and ability to safely practice medicine. The reports shall be
5 submitted quarterly to the PHP, the commencement of which to be
6 determined by the PHP Contractor. Respondent shall pay the expenses of
7 treatment and is responsible for paying for the preparation of the quarterly
8 reports. At the expiration of one year or anytime thereafter, Respondent
9 may submit a written request to the PHP Contractor requesting termination of
10 the requirement that Respondent remain in treatment with a psychiatrist
11 and/or psychotherapist.

12 ii. Respondent shall abstain from taking any illegal drugs or mood
13 altering medications.

14 iii. All prescriptions for controlled substances shall be approved by the
15 PHP Contractor prior to being filled, except in an Emergency. Controlled
16 substances prescribed and filled in an emergency shall be reported to the
17 PHP within 48 hours. Respondent shall take no medication unless the
18 Primary Care Physician ("PCP") or other health care provider to whom the
19 PCP refers Respondent prescribes and the PHP approves the medication.
20 Respondent shall not self-prescribe any medication. "Medication" means a
21 prescription-only drug, controlled substance, and over-the-counter
22 preparation, other than plain aspirin, plain ibuprofen, and plain
23 acetaminophen.

1 iv. Respondent shall submit to random biological fluid, hair and nail
2 testing to ensure compliance with PHP for the duration of his participation in
3 the PHP.

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

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

16 vii. Respondent must provide full consent for the PHP to discuss the
17 Respondent's case with the Respondent's PCP or any other health care
18 providers to ensure compliance with PHP.

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

22 ix. Respondent shall be responsible for all costs, including PHP costs
23 associated with participating in PHP at the time service is rendered, or within
24 30 days of each invoice sent to the Respondent. An initial deposit of two
25 months PHP fees is due upon entering the program. Failure to pay either the

1 initial PHP deposit or monthly fees 60 days after invoicing will be reported to
2 the Board by the PHP and may result in disciplinary action up to and
3 including revocation.

4 x. Respondent shall immediately provide a copy of this Order to all
5 employers, hospitals and free standing surgery centers where Respondent
6 currently has or in the future gains employment or privileges. Within 30 days
7 of the date of this Order, Respondent shall provide the PHP with a signed
8 statement of compliance with this notification requirement. Respondent is
9 further required to notify, in writing, all employers, hospitals and free standing
10 surgery centers where Respondent currently has or in the future gains
11 employment or privileges of a chemical dependency relapse or violation of
12 this Interim Consent Agreement.

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

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

24 c. **Obey All Laws**

1 Respondent shall obey all state, federal and local laws, all rules governing
2 the practice of medicine in Arizona, and remain in full compliance with any court ordered
3 criminal probation, payments and other orders.

4 d. **Tolling**

5 In the event Respondent should leave Arizona to reside or practice outside
6 the State or for any reason should Respondent stop practicing medicine in Arizona,
7 Respondent shall notify the Executive Director in writing within ten days of departure and
8 return or the dates of non-practice within Arizona. Non-practice is defined as any period of
9 time exceeding thirty days during which Respondent is not engaging in the practice of
10 medicine. Periods of temporary or permanent residence or practice outside Arizona or of
11 non-practice within Arizona, will not apply to the reduction of the probationary period.

12 e. **Probation Termination**

13 Prior to the termination of Probation, Respondent must submit a written
14 request to the Board for release from the terms of this Order. Respondent's request for
15 release will be placed on the next pending Board agenda, provided a complete submission
16 is received by Board staff no less than 14 days prior to the Board meeting. Respondent's
17 request for release must provide the Board with evidence establishing that he has
18 successfully satisfied all of the terms and conditions of this Order. The Board has the sole
19 discretion to determine whether all of the terms and conditions of this Order have been
20 met or whether to take any other action that is consistent with its statutory and regulatory
21 authority.
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23 3. This Order supersedes any and all Orders previously issued by the Board
24 regarding this matter and resolves matters MD-14-1616A, MD-15-0045A, MD-15-0161A,
25 MD-15-0203A, MD-15-0239A, MD-15-0259A, and MD-15-0303A.

1 or made for any other use, such as in the context of another state or federal government
2 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
3 any other state or federal court.

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

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

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

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

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

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

24 12. ***Respondent has read and understands the conditions of this***
25 ***agreement for Stayed Revocation and Probation.***

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GEORGE F. GWINN, M.D.

DATED: 6/3/2015

EXECUTED COPY of the foregoing mailed
this 4th day of June, 2015 to:

Christine Cassetta, Esq.
Quarles & Brady, LLP
One Renaissance Square
Two North Central Avenue
Phoenix, AZ 85004-2391

ORIGINAL of the foregoing filed
this 4th day of June, 2015 with:

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



Board Staff