

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

3 **DARYL L. KIRKBY, M.D.**

4 Holder of License No. **21482**
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-09-0765A

**ORDER FOR LETTER OF REPRIMAND
AND PROBATION AND CONSENT TO
SAME**

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

11 **FINDINGS OF FACT**

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

14 2. Respondent is the holder of license number 21482 for the practice of
15 allopathic medicine in the State of Arizona.

16 3. The Board initiated case number MD-09-0765A after receiving a report from
17 Respondent of a positive lab test for alcohol while working.

18 4. On June 15, 2009, Respondent performed an outpatient procedure on forty-
19 seven year-old female patient ("LA") using intravenous Versed and Fentanyl sedation.
20 Respondent then injected LA in the right elbow and right hip joint under fluoroscopy. On
21 June 16, 2009, the surgical hospital staff reported to the Board that during the procedure,
22 Respondent demonstrated behavior consistent with health issues and/or substance abuse.

23 5. On that same date, Respondent reported that he submitted to drug testing,
24 which was positive for alcohol and Valium. On June 29, 2009, Respondent met the
25 Board's Addiction Medicine Contractors. The Board's Contractor recommended that
Respondent undergo treatment for chemical dependency and enroll in the Board's

1 Monitored Aftercare Program (MAP). On October 21, 2009, Respondent successfully
2 completed treatment. On November 4, 2009, Respondent entered into an Interim Order to
3 Participate in MAP and is in compliance with that Order.

4 6. The standard of care requires a physician to engage in the active practice of
5 medicine drug and alcohol free whenever rendering patient care.

6 7. Respondent deviated from the standard of care by failing to be drug and
7 alcohol free while rendering care and treatment to LA.

8 8. There was potential for mis-directing either or both injections and for an
9 injection.

10 CONCLUSIONS OF LAW

11 1. The Board possesses jurisdiction over the subject matter hereof and over
12 Respondent.

13 2. The conduct and circumstances described above constitute unprofessional
14 conduct pursuant to A.R.S. § 32-1401(27)(f) (“[h]abitual intemperance in the use of alcohol
15 or habitual substance abuse.”) and A.R.S. § 32-1401(27)(q) (“[a]ny conduct or practice that
16 is or might be harmful or dangerous to the health of the patient or the public.”).

17 ORDER

18 IT IS HEREBY ORDERED THAT:

19 1. Respondent is issued a Letter of Reprimand.

20 2. Respondent is placed on Probation for **five years** with the following terms
21 and conditions:

22 a.1. Participation¹. Respondent shall promptly enroll in and participate in the
23 Board's program for the treatment and rehabilitation of physicians who are impaired by
24

25 _____
¹ Respondent's MAP participation is retroactive to November 4, 2009.

1 alcohol or drug abuse ("MAP"). Respondent's participation in MAP may be unilaterally
2 terminated with or without cause at the Board's discretion at any time after the issuance of
3 this Order.

- 4 i. Respondent shall submit quarterly declarations under penalty of
5 perjury stating whether there has been compliance with all conditions
6 of MAP. The declarations shall be submitted to the contractor retained
7 by the Board to administer the MAP program ("Contractor") on or
8 before the 15th of March, June, September and December of each
9 year, beginning on or before March, 2010.

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

17 **3. 12 Step or Self-Help Group Meetings.** Respondent shall attend
18 ninety 12-step meetings or other self-help group meetings appropriate for substance
19 abuse and approved by the MAP Contractor, for a period of ninety days beginning no later
20 than either (a) the first day following Respondent's discharge from chemical dependency
21 treatment or (b) the date of this Order.

22 **4.** Following completion of the ninety meetings in ninety days,
23 Respondent shall participate in a 12-step recovery program or other self-help program
24 appropriate for substance abuse as recommended by the MAP Contractor. Respondent
25 shall attend a minimum of three 12-step or other self-help program meetings per week for

1 a total of twelve per month. Two of the twelve meetings must be Caduceus meetings.
2 Respondent must maintain a log of all self-help meetings. The MAP Contractor will provide
3 the log to Respondent.

4 **5. Approved Primary Care Physician.** Respondent shall promptly
5 obtain a primary care physician and shall submit the name of the physician to the MAP
6 Contractor in writing for approval. The approved primary care physician ("PCP") shall be
7 in charge of providing and coordinating Respondent's medical care and treatment. Except
8 in an *Emergency*, Respondent shall obtain medical care and treatment only from the PCP
9 and from health care providers to whom the PCP refers Respondent. Respondent shall
10 request that the PCP document all referrals in the medical record. Respondent shall
11 promptly inform the PCP of Respondent's rehabilitation efforts and provide a copy of this
12 Order to the PCP. Respondent shall also inform all other health care providers who
13 provide medical care or treatment that Respondent is participating in MAP.

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

17 **6. Medication.** Except in an *Emergency*, Respondent shall take no
18 *Medication* unless the PCP or other health care provider to whom the PCP refers
19 Respondent prescribes the *Medication*. Respondent shall not self-prescribe any
20 *Medication*.

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

24 **7.** If a controlled substance is prescribed, dispensed, or administered to
25 Respondent by any person other than PCP, Respondent shall notify the PCP in writing

1 within 48 hours and notify the MAP Contractor immediately. The notification shall contain
2 all information required for the medication log entry specified in paragraph 8. Respondent
3 shall request that the notification be made a part of the medical record. This paragraph
4 does not authorize Respondent to take any *Medication* other than in accordance with
5 paragraph 6.

6 **8. Medication Log.** Respondent shall maintain a current legible log of
7 all *Medication* taken by or administered to Respondent, and shall make the log available to
8 the MAP Contractor upon request. For *Medication* (other than controlled substances)
9 taken on an on-going basis, Respondent may comply with this paragraph by logging the
10 first and last administration of the *Medication* and all changes in dosage or frequency.
11 The log, at a minimum, shall include the following:

- 12 a. Name and dosage of *Medication* taken or administered;
- 13 b. Date taken or administered;
- 14 c. Name of prescribing or administering physician;
- 15 d. Reason *Medication* was prescribed or administered.

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

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

20 **10. Biological Fluid Collection.** During all times that Respondent is
21 physically present in the State of Arizona and such other times as the MAP Contractor
22 may direct, Respondent shall promptly comply with requests to submit to witnessed
23 biological fluid collection. If Respondent is directed to contact an automated telephone
24 message system to determine when to provide a specimen, Respondent shall do so within
25 the hours specified. For the purposes of this paragraph, in the case of an in-person

1 request, "promptly comply" means "immediately." In the case of a telephonic request,
2 "promptly comply" means that, except for good cause shown, Respondent shall appear
3 and submit to specimen collection no later than two hours after telephonic notice to appear
4 is given. The MAP Contractor in its sole discretion shall determine good cause.

5 **11.** Respondent shall provide the MAP Contractor in writing with one
6 telephone number that shall be used to contact Respondent on a 24 hour per day/seven
7 day per week basis to submit to biological fluid collection. For the purposes of this section,
8 telephonic notice shall be deemed given at the time a message to appear is left at the
9 contact telephone number provided by Respondent. Respondent authorizes any person
10 or organization conducting tests on the collected samples to provide testing results to the
11 MAP Contractor.

12 **12.** Respondent shall cooperate with collection site personnel regarding
13 biological fluid collection. Repeated complaints from collection site personnel regarding
14 Respondent's lack of cooperation regarding collection may be grounds for termination
15 from MAP.

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

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

1 **15. Examination.** Respondent shall submit to mental, physical, and
2 medical competency examinations at such times and under such conditions as directed by
3 the MAP Contractor to assist in monitoring Respondent's ability to safely perform as a
4 physician and Respondent's compliance with the terms of this Order.

5 **16. Treatment.** Respondent shall submit to all medical, substance
6 abuse, and mental health care and treatment ordered by the MAP Contractor.

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

9 **18. Interviews.** Respondent shall appear in person before the Board and
10 its Staff and MAP Contractor for interviews upon request, upon reasonable notice.

11 **19. Address and Phone Changes, Notice.** Respondent shall
12 immediately notify the MAP Contractor in writing of any change in office or home
13 addresses and telephone numbers.

14 **20. Relapse, Violation.** In the event of chemical dependency relapse by
15 Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent
16 shall promptly enter into an Interim Order for Practice Restriction and Consent to the
17 Same that requires, among other things, that Respondent not practice medicine until such
18 time as Respondent successfully completes long-term inpatient for chemical dependency
19 designated by the MAP Contractor and obtains affirmative approval from the Board or the
20 Executive Director to return to the practice of medicine. Prior to approving Respondent's
21 request to return to the practice of medicine, Respondent may be required to submit to
22 witnessed biological fluid collection, undergo any combination of physical examination,
23 psychiatric or psychological evaluation and/or successfully pass the special purpose
24 licensing examination or the Board may conduct interviews for the purpose of assisting it
25 in determining the ability of Respondent to safely return to the practice of medicine. **In no**

1 respect shall the terms of this paragraph restrict the Board's authority to initiate and
2 take disciplinary action for violation of this Order.

3 **21. Notice Requirements.**

4 **(A)** Respondent shall immediately provide a copy of this Order to all employers
5 and all hospitals and free standing surgery centers where Respondent currently has
6 privileges. Within 30 days of the date of this Order, Respondent shall provide the MAP
7 Contractor with a signed statement of compliance with this notification requirement. Upon
8 any change in employer or upon the granting of privileges at additional hospitals and free
9 standing surgery centers, Respondent shall provide the employer, hospital or free standing
10 surgery center with a copy of this Order. Within 30 days of a change in employer or upon
11 the granting of privileges at additional hospitals and free standing surgery centers,
12 Respondent shall provide the MAP Contractor with a signed statement of compliance with
13 this notification requirement.

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

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

21 **23. Out-of-State.** In the event Respondent resides or practices as a
22 physician in a state other than Arizona, Respondent shall participate in the rehabilitation
23 program sponsored by that state's medical licensing authority or medical society.
24 Respondent shall cause the monitoring state's program to provide written reports to the
25 MAP Contractor regarding Respondent's attendance, participation, and monitoring. The

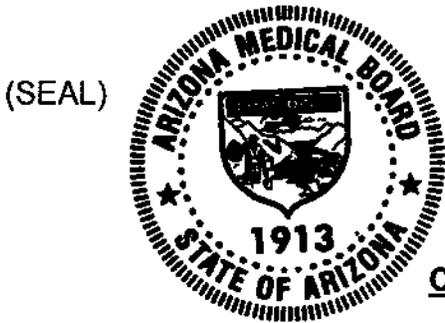
1 reports shall be due quarterly on or before the 15th day of March, June, September, and
2 December of each year, until the Board terminates this requirement in writing. The
3 monitoring state's program and Respondent shall immediately notify the MAP Contractor if
4 Respondent: a) is non-compliant with any aspect of the monitoring requirements; b)
5 relapses; c) tests positive for controlled substances; d) has low specific gravity urine drug
6 test(s), missed and/or late urine drug tests, or otherwise rejected urine drug tests; and e) is
7 required to undergo any additional treatment.

8 **24.** Respondent shall immediately obtain a treating psychiatrist for
9 psychotherapy treatment approved by the MAP Contractor and shall remain in treatment
10 with the psychiatrist until further order. Respondent shall instruct the psychiatrist to release
11 to the MAP Contractor, upon request, all records relating to Respondent's treatment, and
12 to submit quarterly written reports to the MAP Contractor regarding diagnosis, prognosis,
13 medications, and recommendations for continuing care and treatment of Respondent. The
14 reports shall be submitted on or before the 15th day of March, June, September and
15 December of each year, beginning on or before March, 2010. Respondent shall provide
16 the psychiatrist with a copy of this order. Respondent shall pay the expenses of all the
17 psychiatric care and be responsible for the preparation of the quarterly reports. After
18 **twelve months**, Respondent may submit a written request to the MAP Contractor
19 requesting termination of the requirement that Respondent remain in treatment with a
20 psychiatrist. The decision to terminate will be based, in part, upon the treating
21 psychiatrist's recommendation for continued care and treatment.

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

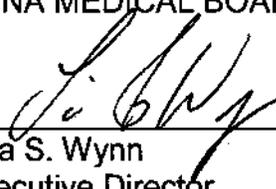
24 **26.** The Board retains jurisdiction and may initiate new action based upon
25 any violation of this Order.

1 DATED AND EFFECTIVE this 10TH day of FEBRUARY, 2010.



ARIZONA MEDICAL BOARD

4 By


Lisa S. Wynn
Executive Director

5
6 **CONSENT TO ENTRY OF ORDER**

7 1. Respondent has read and understands this Consent Agreement and the
8 stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Respondent
9 acknowledges he has the right to consult with legal counsel regarding this matter.

10 2. Respondent acknowledges and agrees that this Order is entered into freely
11 and voluntarily and that no promise was made or coercion used to induce such entry.

12 3. By consenting to this Order, Respondent voluntarily relinquishes any rights to
13 a hearing or judicial review in state or federal court on the matters alleged, or to challenge
14 this Order in its entirety as issued by the Board, and waives any other cause of action
15 related thereto or arising from said Order.

16 4. The Order is not effective until approved by the Board and signed by its
17 Executive Director.

18 5. All admissions made by Respondent are solely for final disposition of this
19 matter and any subsequent related administrative proceedings or civil litigation involving
20 the Board and Respondent. Therefore, said admissions by Respondent are not intended
21 or made for any other use, such as in the context of another state or federal government
22 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
23 any other state or federal court.

24 6. Upon signing this agreement, and returning this document (or a copy thereof)
25 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

1 modifications to this original document are ineffective and void unless mutually approved
2 by the parties.

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

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

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

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

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

16
17 
18 DARYL L. KIRKBY, M.D.

DATED: 1/19/10

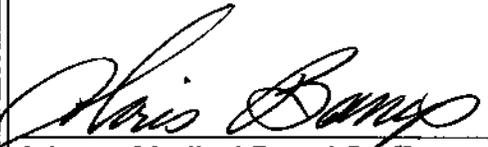
19 EXECUTED COPY of the foregoing mailed
20 this 11th day of February, 2010 to:
21 Daryl L. Kirkby, M.D.
22 Address of Record

23 EXECUTED COPY of the foregoing mailed
24 this 11th day of February, 2010 to:
25 Sucher & Greenberg, P.C.

ORIGINAL of the foregoing filed
this 11th day of February, 2010 with:

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