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BEFORE THE ARIZONA STATE BOARD OF MEDICAL EXAMINERS

In the Matter of: MICHAEL MAHL, M.D. Holder of License No. 12868 For the Practice of Medicine In the State of Arizona, Respondent.	Investigation Case Nos. MD-99-0286 and MD-99-0416. **CONSENT AGREEMENT AND ORDER FOR PRACTICE RESTRICTION WITH PROBATION**

CONSENT AGREEMENT

RECITALS

To settle this case consistent with the public interest, statutory requirements and responsibilities of the Arizona State Board of Medical Examiners ("Board"), and under A.R.S. § § 32-1401 *et seq.*, and 41-1092.07(F)(5), Michael Mahl, M.D., holder of License Number 12868 to practice allopathic medicine in the State of Arizona ("Respondent"), and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as the final disposition of this matter.

1. Respondent has read and understands this Consent Agreement as set forth herein, and has had the opportunity to discuss this Consent Agreement with an attorney.

2. Respondent understands that he has a right to a public administrative hearing concerning each allegation set forth in the above-captioned matter, at which administrative hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all rights to such an administrative hearing, as well as all rights of rehearing, review, reconsideration, appeal, and judicial review, concerning the matters set forth herein. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

3. If any part of the Consent Agreement is declared void or unenforceable by a court of competent jurisdiction the remainder of the Consent Agreement shall remain in full force and effect.

4. Respondent agrees that the Board may adopt this Consent Agreement, under A.R.S. § 32-1451(F). Respondent understands that this Consent Agreement or any part of the agreement may be considered in any future disciplinary action against him.

5. Respondent understands this Consent Agreement deals with Board Investigation Case Nos. MD-99-0286 and MD-99-0416 involving allegations of unprofessional conduct against Respondent. The investigation into these allegations against Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

6. Respondent understands that this Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other pending or future investigation, action or proceeding. Respondent also understands that acceptance of this Consent Agreement does not preclude any other agency, subdivision or officer of this state from instituting any other civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

. . . .

7. All admissions made by Respondent in this Consent Agreement are made solely for the final disposition of Board Investigation Case Nos. MD-99-0286 and MD-99-0416, and any related administrative proceedings involving the Board and Respondent. Therefore, any admissions made by Respondent in this Consent Agreement are not intended or made for any other use, such as in the context of another regulatory agency proceeding, civil or criminal proceeding, whether in the State of Arizona or in any other state or federal court.

8. Respondent acknowledges and agrees that, upon signing this Consent Agreement and returning this document to the Board's Executive Director, Respondent may not revoke his acceptance of the Consent Agreement or make any modifications to the document, regardless of whether the Consent Agreement has been issued by the Executive Director. Any modification to this original document is ineffective and void unless mutually approved by the parties in writing.

9. Respondent understands that this Consent Agreement shall not become effective unless and until adopted by the Board and signed by its Executive Director.

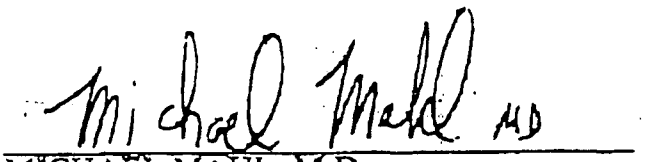
10. Respondent understands and agrees that if the Board does not adopt this Consent Agreement, he will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defense.

11. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board, and shall be reported as required by law to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

12. Respondent understands that any violation of this Consent Agreement constitutes unprofessional conduct under A.R.S. § 32-1401(25)(r)([v]iolating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under the provisions of this chapter) and shall result in disciplinary action

under A.R.S. § 32-1451 *et seq.*

DATED: 07-11-02



MICHAEL MAHL, M.D.

Reviewed and Approved as to Form:

By: CHARLES E. BURR, ESQ.
Attorney for Respondent

FINDINGS OF FACT

By stipulation of the parties, this Consent Agreement is entered into for final disposition of the matters described herein. Respondent acknowledges that sufficient evidence exists for the Board to make the following 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. 12868 for the practice of allopathic medicine in the State of Arizona.

3. Respondent practiced child psychiatry with a specialty in chemical dependency.

4. In 1992, Respondent opened a group home in the Tucson area to treat children with serious psychiatric disorders. A few years later, Respondent opened another group home and an outpatient treatment center near the first group home. Respondent's primary source of patients came from governmental agencies that dealt with juveniles.

5. In late 1997, Respondent closed the group homes and outpatient center to enter rehabilitation for chemical dependency, and his treatment contracts were terminated with the governmental agencies.

6. In March 1997, the Board received information from the juvenile court in Tucson that three juvenile delinquent patients alleged that Respondent made inappropriate statements to them and one said Respondent inappropriately touched him, during a visit to his outpatient office that was not supervised by the juveniles' probation officer.

7. In November 1997, the Board received information from El Dorado Hospital in Tucson that Respondent had submitted to a urine screen while at its emergency room and the screen tested positive for cocaine.

8. The Board opened investigations into the two matters and conducted interviews with Respondent, patients, former staff of the group homes, juvenile authorities, and law enforcement agents.

9. The Board's investigation disclosed that several patients at the group homes accused Respondent of sexually molesting them and making inappropriate statements to them. Respondent denied that he sexually molested any of his patients; however, he admitted that he became addicted to cocaine and amphetamines, while operating the group homes.

10. The Board's investigation disclosed that the allegations of sexual molestation were investigated by the Tucson Police Department for over a year. The police investigation found insufficient evidence to support the patients' allegations of sexual molestation. Further, the police department's information was forwarded to the Pima County Attorney's Office for its review. After reviewing the information, the Pima County Attorney's Office found there was insufficient evidence to act on the allegations.

11. The Board's investigation confirmed that Respondent made inappropriate statements to his patients. Respondent at times revealed inappropriate information about himself to his patients, and participated in therapeutic martial art activities with his patients who perceived these actions as sexually provocative, due to their age and psychiatric disorders.

12. On May 15, 1998, Respondent had an informal interview before the Board. At that interview, Respondent admitted he had participated from time-to-time in the therapeutic martial arts program at the group homes, that he had admitted his sexual orientation to some patients, and these actions reflected poor therapeutic judgment. Respondent also admitted to being addicted to amphetamines and cocaine, for a period of nine months prior to voluntarily entering rehabilitation for chemical dependency and that he was sexually compulsive only in his personal life during this nine month period of his substance abuse.

13. At the interview, the Board expressed concern that Respondent had not successfully completed an in-patient treatment program for his chemical dependency and sexual compulsivity. The Board stated that Respondent needed to successfully complete an in-patient treatment program to be able to enter the Monitored Aftercare Program. This Program is the Board's substance abuse treatment and rehabilitation program for physicians and physician assistants.

14. At the interview, the Board offered a Stipulation and Order to Respondent. Respondent entered into the Stipulation and Order. The Order and Stipulation required Respondent to cease the practice of medicine until the Board gave its approval that he can return to the practice medicine; successfully complete in-patient treatment for his chemical dependency and sexual compulsivity; and release his medical records to the Board from all the facilities where he received treatment. Respondent has complied with the Stipulation and Order.

15. In September 1998, Respondent received in-patient treatment for his addictions from Dr. Richard Irons, M.D., at the Menninger Clinic in Kansas. Respondent successfully completed the 30-day treatment program. After completing the in-patient treatment, Respondent retained the services of a psychologist, a psychiatrist, and an internist who specialized in addictions, to continue his out-patient therapy.

16. On August 14, 1999, Board agents did an investigational interview with Respondent. After interviewing Respondent, Board agents recommended to the Board further evaluation of Respondent.

17. On August 27, 1999, the Board issued an Interim Order to Respondent. The Order required Respondent to do the following: submit to psychometric and psychosexual evaluations by health practitioners approved by the Board; submit to random biological fluid testing at Respondent's expense; provide the Board a 24-hour telephone contact number; and provide the Board advance notice whenever Respondent left his home or office for more than 24 hours. Respondent has fully complied with the Interim Order.

18. On December 12 & 18, 1999, Judith Becker, Ph.D., completed psychometric and psychosexual evaluations of Respondent. Around this time period, Steven R. Gray, Ed.D., also completed psychosexual evaluations of Respondent.

19. In March 2000, Dr. Becker, incorporating Dr. Gray's findings, sent a final report to the Board. The report stated Respondent did not display the characteristics of a pedophile or a hebephile, but he does have a history of cannabis, amphetamine, and cocaine dependence. The report also stated that Respondent continues to make progress in controlling his chemical dependency through on-going treatment with a psychologist and a psychiatrist. The report made the following suggestions to the Board:

i. Limit Dr. Mahl's practice to adult patients (18 years of age and over).

ii. Have another physician supervise Dr. Mahl's practice for a specified period of time and that supervisor report back to the Board.

iii. Continue doing drug abuse screens to ensure that Dr. Mahl does not abuse illegal substances.

iv. Have Dr. Mahl continue in therapy.

v. Consider having Dr. Mahl undergo polygraph evaluations to assist in ascertaining if he has complied with the above suggestions.

20. On March 13-17 and June 5-9, 2000, Respondent was re-evaluated by Richard Irons, M.D., and his staff. Dr. Irons forwarded an evaluation report to the Board stating the following:

i. We believe that Michael Mahl has made significant progress in his personal recovery from substance dependency. He continues to show evidence that supports sustained remission.

ii. Michael Mahl has continued to gain insight into the nature of his boundary violations and sexual disorder. He has come to acknowledge some culpability for creating an environment in which his words, gestures and actions could have been interpreted as grooming and sexual provocative. He agrees that it would be easy for adolescent boys in this environment to feel sexualized.

iii. Our team supports the suggestions made by Dr. Judith Becker in the letter to the Board from March 11, 2000, regarding Dr. Mahl, that is that Dr. Mahl should be granted the privilege to practice medicine under the following conditions:

a. limitations in Dr. Mahl's practice to adult patients, in our opinion, age 21 or older

b. have another physician monitor and supervise Dr. Mahl as necessary for a specified period of time as directed by the Board

c. continue pursuing his recovery from substance dependency and to provide evidence that he remains free from the use of mood-altering substances

d. continue in individual and group psychotherapy

iv. Our team finds the allegations made against Dr. Mahl by the adolescent youth interviewed by Dr. Glasser to be of concern, however, we do not believe that there is a finding of fact or sufficient clinical evidence to support the diagnosis of a paraphilia, specifically, pedophilia or hebephilia.

21. The parties waive any further findings of fact.

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CONCLUSIONS OF LAW

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona, under A.R.S. § 32-1401, *et seq.*

2. Respondent's conduct and circumstances described above constitute unprofessional conduct under A.R.S. § 32-1401(25)(f) ([h]abitual intemperance in the use of alcohol or habitual substance abuse.)

3. Respondent's conduct and circumstances described above constitute unprofessional conduct under A.R.S. § 32-1401(25)(q) ([a]ny conduct or practice which is or might be harmful or dangerous to the health of the patient of the public.)

ORDER

Based upon the above Findings of Fact and Conclusions of Law and under the authority granted to the Board by A.R.S. §§ 41-1092.07(F)(5) and 32-1451(F),

IT IS HEREBY ORDERED:

I. Practice Restriction

License No. 12868, issued to Respondent, for the practice of allopathic medicine in the State of Arizona, is RESTRICTED to practicing medicine only on adults (18 years of age or older) until Respondent meets with the Board and it removes the practice restriction. The Board shall act upon any request to terminate or modify this practice restriction within a reasonable period of time.

II. Probation

Respondent's medical license is placed on probation for **five (5) years** with the following terms and conditions as stated herein. Respondent is allowed to petition the Board for early termination and/or modification of the probation.

1. Allopathic Physician Monitor

Within thirty (30) days of the effective date of the Consent Agreement or within thirty (30) days of Respondent's return to the practice of medicine, if he is not

practicing medicine on the effective date of the Consent Agreement, Respondent shall obtain an allopathic physician monitor, in Respondent's field of practice. The monitor must be pre-approved by designated Board staff and have an active, unrestricted license to practice medicine in Arizona. Respondent shall provide a copy of this Consent Agreement to the physician monitor. Respondent shall instruct the monitor to submit quarterly written reports to the Board regarding Respondent's clinical abilities to safely practice psychiatry and medicine. The reports shall be submitted on or before the 15th day of March, June, September and December of each year. Respondent shall be directly responsible for any fees charged by the monitor. After **one (1) year** of monitoring, Respondent may request termination of this monitoring requirement by submitting a written request to the Executive Director. His recommendation will be subject to final approval by the Board.

2. Obtain Treating Psychiatrist

Within thirty (30) days of the effective date of the Consent Agreement, Respondent shall obtain a treating psychiatrist approved by designated Board staff and shall remain in treatment with the psychiatrist until further order of the Board. Respondent shall provide a copy of this Consent Agreement to the treating psychiatrist. Respondent shall instruct the psychiatrist to release to the Board, upon its request, all records relating to treatment of Respondent, and to submit quarterly written reports to the Board regarding diagnosis, prognosis, and recommendations for continuing care and treatment of Respondent. The reports shall be submitted on or before the 15th day of March, June, September and December of each year.

3. Continuing Medical Education

Within six (6) months of the effective date of this Consent Agreement, Respondent shall complete twenty (20) hours of Category I Continuing Medical Education ("CME") in Boundary Issues and Ethics. These CME hours must be pre-approved by designated Board staff prior to Respondent's enrollment for these hours. Respondent shall

send to designated Board staff, either by mail or facsimile, satisfactory proof of CME course attendance within thirty (30) days after completing the CME course. These CME hours shall be in addition to the hours required for the biennial renewal of Respondent's medical license.

4. Monitored Aftercare Program

Respondent shall promptly enroll and participate in the Monitored Aftercare Program ("MAP") under the terms and conditions as stated herein.

5. Quarterly Declarations

Respondent shall submit to the Board quarterly declarations, under penalty of perjury, on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. The declarations shall be submitted on or before the 15th day of March, June, September and December of each year.

6. Office Surveys

Respondent shall be subject to random office surveys to be conducted by Board staff or its agents to verify compliance with this Consent Agreement. Based upon the results of the office survey, the Board retains jurisdiction to take additional disciplinary or remedial action.

7. Tolling of Probationary Period

In the event Respondent should leave Arizona to reside or practice outside the State or for any reason should Respondent stop practicing medicine in Arizona, Respondent shall notify the Executive Director in writing within ten (10) days of departure and return of the dates of non-practice within Arizona. Non-practice is defined as any period of time exceeding thirty (30) days in which Respondent is not engaging in the practice of medicine. Periods of temporary or permanent residence or practice outside Arizona or of non-practice within Arizona shall toll Respondent's probationary period stated herein.

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8. Termination of Orders

This Consent Agreement supercedes and terminates the following Orders between the Board and Respondent:

A. Stipulation and Order dated July 2, 1998.

B. Interim Order dated August 27, 1999.

III. Monitored Aftercare Program

Definitions

"Medication" is defined as "prescription-only drug, controlled substance, and over-the counter preparation, other than plain aspirin and plain acetaminophen."

"Emergency" is defined as "a serious accident or sudden illness that, if not treated immediately, may result in a long-term medical problem or loss of life."

Terms

1. Participation

A. Respondent shall immediately instruct all his psychologists, psychiatrists or other healthcare providers who have evaluated or treated him within the past five (5) years to release Respondent's records to the Board. Respondent shall provide copies of the record releases provided to his psychologists, psychiatrists or other healthcare providers to the Board within thirty (30) days of the effective date of the Consent Agreement.

B. Upon receipt of these records, the Board shall evaluate these records to determine Respondent's participation time in MAP. Respondent agrees that the Board has sole and absolute discretion to determine Respondent's participation time in MAP. However, Respondent's participation time in MAP shall be five (5) years or less. Further, Respondent absolutely relinquishes and waives all rights before any administrative, state or federal court of competent jurisdiction to review, rehear, reconsider, appeal, or any other type of administrative or judicial action concerning the Board's determination of

Respondent's participation time in MAP.

C. The Board shall notify Respondent in writing of its decision about Respondent's participation time in MAP. As part of the participation in MAP, Respondent shall cooperate with Board staff and the contracting MAP consultants.

2. Group Therapy

Respondent shall attend the MAP's group therapy sessions one time per week for the duration of this Consent Agreement, unless excused by the group therapist for good cause such as illness or vacation. Respondent shall instruct the MAP group therapist to release to the Board, upon its request, all records relating to his treatment, and to submit monthly reports to the Board regarding attendance and progress. The reports shall be submitted on or before the 10th day of each month.

3. 12 Step or Self-Help Group Meetings

A. Respondent shall attend ninety (90) 12-step meetings or other self-help group meetings appropriate for substance abuse and approved by the Board, for a period of ninety (90) days beginning no later than the effective date of this Consent Agreement.

B. Following completion of the ninety (90) meetings in ninety (90) days, Respondent shall participate in a 12-step recovery program or other self-help program appropriate for substance abuse as recommended by the group therapist and approved by the Board. Respondent shall attend a minimum of three (3) 12-step or other self-help program meetings per week.

4. Board-Approved Primary Care Physician

A. Immediately after the effective date of the Consent Agreement, Respondent shall obtain a primary care physician and shall submit the name of the physician to the designated Board staff in writing for approval.

B. The Board-approved primary care physician shall be in charge of providing and coordinating Respondent's medical care and treatment. Except in an

Emergency, Respondent shall obtain his medical care and treatment only from the Board-approved primary care physician and from health care providers to whom the Board-approved primary care physician refers Respondent from time to time. Respondent shall request that the Board-approved primary care physician document all referrals in the medical record.

C. Respondent shall promptly inform the Board-approved primary care physician of his rehabilitation efforts and provide a copy of this Consent Agreement to that physician. Respondent shall also inform all other health care providers who provide medical care or treatment that he is participating in MAP.

5. Medication

A. Except in an *Emergency*, Respondent shall take no *Medication* unless the *Medication* is prescribed by his Board-approved primary care physician or other health care provider to whom the Board-approved primary care physician makes referral. Respondent shall not self-prescribe any *Medication*.

B. If a controlled substance is prescribed, dispensed, or is administered to Respondent by any person other than the Board-approved primary care physician, Respondent shall notify the Board-approved primary care physician in writing within 48 hours. The notification shall contain all information required for the medication log entry as specified in paragraph 6. Respondent shall request that the notification be made a part of the medical record. This paragraph does not authorize Respondent to take any *Medication* other than in accordance with paragraph 5A.

6. Medication Log

Respondent shall maintain a current legible log of all *Medication* taken by or administered to him, and shall make the log available to the Board and its staff upon request. For *Medication* (other than controlled substances) taken on an on-going basis, Respondent may comply with this paragraph by logging the first and last administration of the

Medication and all changes in dosages or frequency. The log, at a minimum, shall include the following:

i. Name and dosage of the *Medication* taken or administered;

ii. Date taken or administered;

iii. Name of prescribing or administering physician; and

iv. Reason *Medication* was prescribed or administered.

This paragraph does not authorize Respondent to take any *Medication* other than in accordance with paragraph 5.

7. No Alcohol or Poppy Seeds

Respondent shall not consume alcohol or any food or substances containing poppy seeds.

8. Biological Fluid Collection

A. During all times that Respondent is physically present in the State of Arizona and such other times as designated Board staff may direct, Respondent shall promptly comply with requests from Board staff, the group therapist, or the MAP director to submit to witnessed biological fluid collection. If Respondent is directed to contact an automated telephone message system to determine when to provide a specimen, he shall do so within the hours specified by designated Board staff. For the purposes of this paragraph, in the case of an in-person request, "promptly comply" means "immediately." In the case of a telephonic request, "promptly comply" means that, except for good cause shown, Respondent shall appear and submit to specimen collection no later than two hours after telephonic notice to appear is given. The Board in its sole discretion shall determine good cause.

B. Respondent shall provide designated Board staff in writing with one telephone number which shall be used to contact Respondent on a 24 hours per day/seven days per week basis to submit to biological fluid collection. For the purposes of this

Consent Agreement, 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 Board and the MAP director.

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

9. Payment for Services

Respondent shall pay for all costs, including personnel and contractor costs, associated with participating in MAP at the time service is rendered or within thirty (30) days of each invoice sent to him.

10. Examination

Respondent shall submit to mental, physical, and medical competency examinations at such times and under such conditions as directed by the Board to assist the Board in monitoring Respondent's ability to safely engage in the practice of medicine and compliance with the terms of this Consent Agreement.

11. Treatment

Respondent shall submit to all medical, substance abuse, and mental health care and treatment ordered by the Board, or recommended by the MAP director.

12. Obey All Laws

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

13. Interviews

Respondent shall appear in person before the Board and its staff and committees for interviews upon request, upon reasonable notice.

14. Address and Phone Changes. Notice

Respondent shall immediately notify the Board in writing of any change in office or home addresses and telephone numbers. Respondent shall provide designated Board staff at least three (3) business days advance written notice of any plans to be away from office or home for more than five (5) consecutive days. The notice shall state the reason for the intended absence from home or office, and shall provide a telephone number that may be used to contact Respondent.

15. Relapse, Violation

In the event that Respondent violates any term of this Consent Agreement, Respondent's license shall automatically be summarily suspended. Alternatively, Respondent may request a Surrender of License. If Respondent's license is revoked, Respondent shall be prohibited from reapplying for a license for five (5) years.

16. Notice Requirements

A. Respondent shall immediately provide a copy of this Consent Agreement to all employers, hospitals and free standing surgery centers where Respondent has any privileges to practice. Within thirty (30) days of the effective date of this Consent Agreement, Respondent shall provide the Board with a signed statement that Respondent has complied with this notification requirement.

i. Respondent is further required to notify, in writing, all employers, hospitals and free standing surgery centers where Respondent has any privileges to practice of a chemical dependency relapse, use of drugs or alcohol in violation of this Consent Agreement and/or entry into a treatment program. Respondent shall

provide the Board, within seven (7) days of any of these events, written confirmation that Respondent has complied with this notification requirement.

B. Respondent shall immediately submit to the Board, under penalty of perjury, on a form provided by the Board, the name(s) and address(es) of all employers, hospitals and free standing surgery centers where Respondent currently holds privileges to practice.

i. Respondent is further required to immediately submit to the Board, under penalty of perjury, on a form provided by the Board, notification of any changes as to his employment or medical privileges at any facility during the term of this Consent Agreement.

17. Public Record

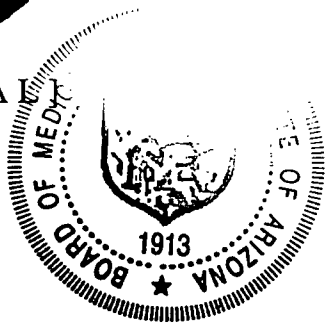
This Consent Agreement is a public record.

18. Out-of-State

In the event Respondent resides or practices medicine in a state other than Arizona, Respondent shall participate in the physician rehabilitation program sponsored by that state's medical licensing authority or medical society. Respondent shall cause the other state's program to provide written reports to the Board regarding his attendance, participation, and monitoring. The reports shall be due on or before the 15th day of March and September of each year, until the Board terminates this requirement in writing.

DATED AND EFFECTIVE this 8th day of August, 2002.

[SEAL]



BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

By _____
BARRY A. CASSIDY, Ph.D., P.A.-C.
Executive Director

ORIGINAL of the foregoing filed:

Board Operations
Arizona Board of Medical Examiners
9545 E. Doubletree Ranch Road
Scottsdale, Arizona 85258

COPY of the foregoing mailed by U.S. Certified Mail this 9 day of August, 2002 to:

Michael Mahl, M.D.
5189 N. Via La Doncella
Tucson, Arizona 85750

COPY of the foregoing mailed this 9 day of August, 2002, to:

Charles E. Buri, Esq.
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