BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **ERIC J. MILLER, M.D.** License No. 19279 For the Practice of Allopathic Medicine In the State of Arizona.	Case No. MD-06-1038A **CONSENT AGREEMENT FOR LETTER OF REPRIMAND, PROBATION AND MONITORED AFTER-CARE PROGRAM**

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Eric J. Miller, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

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

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement of any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

5. 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. The acceptance of this Consent Agreement does not preclude any other agency, subdivision or officer of this State from instituting other civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

6. 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.

7. Upon signing this agreement, and returning this document (or a copy thereof) to the Board's Executive Director, Respondent may not revoke the acceptance of the Consent Agreement. 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.

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

9. This Consent Agreement, once approved and signed, is a public record that will be publicly disseminated as a formal action of the Board and will be reported to the National Practitioner Data Bank and to the Arizona Medical Board's website.

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10. If any part of the Consent Agreement is later declared void or otherwise unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force and effect.

11. Any violation of this Consent Agreement 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.

12. Respondent has read and understands the condition(s) of probation.

Eric J. Miller M.D. DATED: 9/26/07

ERIC J. MILLER, M.D.

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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 19279 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-06-1038A after receiving a complaint from a pharmacist ("Pharmacist") alleging Respondent wrote and/or called in Hydrocodone prescriptions for his wife over the past two years. Board Staff subsequently notified Respondent to appear on January 6, 2007, for an investigational interview regarding the allegations.

4. On January 6, 2007, Respondent contacted the Board's Addiction Medicine Specialist and admitted to abusing Hydrocodone and using Tramadol over a two year period. Respondent also stated he wrote Hydrocodone prescriptions for his wife because her physicians were not providing her with enough medication for chronic foot pain. Respondent prescribed Hydrocodone to her without conducting any examination and without maintaining any medical records regarding his care and treatment he provided to her. Respondent stated about two years ago, he developed hand pain and did not seek medical care for himself, but started using some of his wife's Hydrocodone. Respondent admitted that he subsequently increased the amount of Hydrocodone prescriptions for his wife so there would be enough for him. Respondent admitted he was dependent on Hydrocodone and voluntarily agreed to enter treatment.

5. On January 9, 2007, Respondent signed a Consent Agreement for Practice Restriction prohibiting him from prescribing any form of treatment including prescription medications.

6. On April 13, 2007, Respondent was discharged from treatment with a diagnosis of opioid dependence, which is in early sustained remission in a controlled environment.

7. On April 19, 2007, during an investigational interview with Board Staff, Respondent admitted to also prescribing Hydrocodone to patients DV and HF for other than therapeutic reasons and then diverting it for his own use. Respondent wrote the prescriptions without conducting an examination on each patient, without establishing a doctor-patient relationship with each patient, and without maintaining any medical records regarding his care and treatment provided to each patient. Board Staff obtained pharmacy surveys for patients DV and HF and the surveys confirmed Respondent's statements.

8. A physician is required to maintain adequate legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment. A.R.S. § 32-1401(2). Respondent's records were inadequate because he failed to maintain any medical records on his wife, DV and HF regarding his care and treatment of them.

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)(e) ("[f]ailing or refusing to maintain adequate records on a patient."); A.R.S. § 32-1401(27)(f) ("[h]abitual intemperance in the use of alcohol or habitual substance abuse."); A.R.S. § 32-1401(27)(h) ("[p]rescribing or

dispensing controlled substances to members of the physician's immediate family."); 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.") and A.R.S. § 32-1401(27)(ss) ("[p]rescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or has previously established a doctor-patient relationship.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand for habitual intemperance, for prescribing medications to patients for other than therapeutic purposes, for prescribing controlled substances to a family member, for prescribing to patients without establishing a doctor-patient relationship and for failure to maintain adequate medical records for patients.

2. Respondent is placed on Probation for **five years**[1] with the following terms and conditions:

a. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation. The declarations shall be submitted on or before the 15th of March, June, September and December of each year, beginning on or before September 15, 2007.

b.1. **Participation.** Respondent shall promptly enroll in and participate in the Board's program for the treatment and rehabilitation of physicians who are impaired by

[1] Beginning date of Probation retroactive to April 17, 2007.

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

2. **Relapse Prevention Group.** Respondent shall attend MAP's relapse prevention group therapy sessions one time per week for the duration of this Order, unless excused by the MAP relapse prevention group facilitator for good cause such as illness or vacation. Respondent shall instruct the MAP relapse prevention group facilitators to release to Board Staff, upon request, all records relating to Respondent's treatment, and to submit monthly reports to Board Staff 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.** Respondent shall attend ninety 12-step meetings or other self-help group meetings appropriate for substance abuse and approved by Board Staff, for a period of ninety days beginning not later than either (a) the first day following Respondent's discharge from chemical dependency treatment or (b) the date of this Order.

4. Following completion of the ninety meetings in ninety days, Respondent shall participate in a 12-step recovery program or other self-help program appropriate for substance abuse as recommended by the MAP Director and approved by Board Staff. Respondent shall attend a minimum of three 12-step or other self-help program meetings per week for a total of twelve per month. Two of the twelve meetings must be Caduceus meetings. Respondent must maintain a log of all self-help meetings. Board Staff will provide the log to Respondent.

5. **Board-Staff Approved Primary Care Physician.** Respondent shall promptly obtain a primary care physician and shall submit the name of the physician to Board Staff in writing for approval. The Board-approved primary care physician ("PCP")

shall be in charge of providing and coordinating Respondent's medical care and treatment. Except in an *Emergency*, Respondent shall obtain medical care and treatment only from the PCP and from health care providers to whom the PCP refers Respondent. Respondent shall request that the PCP document all referrals in the medical record. Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and provide a copy of this Order the PCP. Respondent shall also inform all other health care providers who provide medical care or treatment that Respondent is participating in MAP.

a. "*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.

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

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

7. If a controlled substance is prescribed, dispensed, or is administered to Respondent by any person other than PCP, Respondent shall notify the PCP in writing within 48 hours and notify the MAP Director immediately. The notification shall contain all information required for the medication log entry specified in paragraph 8. 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 6.

8. **Medication Log.** Respondent shall maintain a current legible log of all *Medication* taken by or administered to Respondent, and shall make the log available to

the Board 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 dosage or frequency. The log, at a minimum, shall include the following:

a. Name and dosage of *Medication* taken or administered;

b. Date taken or administered;

c. Name of prescribing or administering physician;

d. Reason *Medication* was prescribed or administered.

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

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

10. **Biological Fluid Collection.** During all times that Respondent is physically present in the State of Arizona and such other times as Board Staff may direct, Respondent shall promptly comply with requests from Board Staff or 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, Respondent shall do so within the hours specified by 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 not later than two hours after telephonic notice to appear is given. The Board in its sole discretion shall determine good cause.

11. Respondent shall provide Board Staff 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 collection. 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 Board and the MAP Director.

12. 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.

13. **Out of State Travel and/or Unavailability at Home or Office Telephone Number.** Respondent shall provide Board Staff at least three business days advance written notice of any plans to be away from office or home when such absence would prohibit Respondent from responding to an order to provide a biological fluid specimen or from responding to communications from the Board. 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.

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

15. **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 perform as a physician and Respondent's compliance with the terms of this Order.

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

17. **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.

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

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

20. **Relapse, Violation**. In the event of chemical dependency relapse by Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent shall promptly enter into an Interim Consent Agreement for Practice Restriction that requires, among other things, that Respondent not practice medicine until such time as Respondent successfully completes long-term inpatient or residential treatment program for chemical dependency designated by Board Staff and obtains affirmative approval from the Board or the Executive Director to return to the practice of medicine. Prior to approving Respondent's request to return to the practice of medicine, Respondent may be required to submit to witnessed biological fluid collection, undergo any combination of physical examination, psychiatric or psychological evaluation and/or successfully pass the special purpose licensing examination or the Board may conduct interviews for the purpose of assisting it in determining the ability of Respondent to safely return to the practice of medicine. **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.**

21. **Notice Requirements.**

(A) Respondent shall immediately provide a copy of this Order to all employers and all hospitals and free standing surgery centers where Respondent currently has privileges. Within 30 days of the date of this Order, Respondent shall provide the

Board with a signed statement of compliance with this notification requirement. Upon any change in employer or upon the granting of privileges at additional hospitals and free standing surgery centers, Respondent shall provide the employer, hospital or free standing surgery center with a copy of this Order. Within 30 days of a change in employer or upon the granting of privileges at additional hospitals and free standing surgery centers, Respondent shall provide the Board with a signed statement of compliance with this notification requirement.

(B) 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 employment or privileges, of a chemical dependency relapse, use of drugs or alcohol in violation of this Order and/or entry into a treatment program. Within seven days of any of these events Respondent shall provide the Board written confirmation of compliance with this notification requirement.

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

23. **Out-of-State.** 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 reports to the Board regarding Respondent's attendance, participation, and monitoring. The reports shall be due quarterly on or before the 15th day of March, June, September, and December of each year, until the Board terminates this requirement in writing. The monitoring state's program and Respondent shall immediately notify the Board if Respondent: a) is non-compliant with any aspect of the monitoring requirements; b) relapses; c) tests positive for controlled substances; d) has low specific gravity urine drug

test(s), missed and/or late urine drug tests, or otherwise rejected urine drug tests; and e) is required to undergo any additional treatment.

24. This Order supersedes all previous consent agreements and stipulations between the Board and/or the Executive Director and Respondent.

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

26. Respondent shall immediately obtain a treating psychiatrist approved by Board Staff and shall remain in treatment with the psychiatrist until further order of the Executive Director. Respondent shall instruct the psychiatrist to release to Board Staff, upon request, all records relating to Respondent's treatment, and to submit quarterly written reports to Board Staff regarding diagnosis, prognosis, medications, 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, beginning on or before September 15, 2007.

3. This Order is the final disposition of case number MD-06-1038A.

DATED AND EFFECTIVE this 12th day of October, 2007.

(SEAL)

ARIZONA MEDICAL BOARD

By _____
TIMOTHY C. MILLER, J.D.
Executive Director

ORIGINAL of the foregoing filed this 12th day of October 2007 with:

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

EXECUTED COPY of the foregoing mailed

this 25th day of October, 2007 to:

Stephen Myers, Esq.
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EXECUTED COPY of the foregoing mailed
this 25th day of October, 2007 to:

Eric J. Miller, M.D.
Address of Record

Chris Lamp
Investigational Review