

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2  
3 In the Matter of

4 **MARK R. HEMPHILL, M.D.**

5 Holder of License No. 24566  
6 For the Practice of Allopathic Medicine  
7 In the State of Arizona.

Case No. MD-06-0770A

**CONSENT AGREEMENT FOR  
PROBATION**

8 **CONSENT AGREEMENT**

9 By mutual agreement and understanding, between the Arizona Medical Board  
10 (“Board”) and Mark R. Hemphill, M.D. (“Respondent”), the parties agreed to the following  
11 disposition of this matter.

12 1. Respondent has read and understands this Consent Agreement and the  
13 stipulated Findings of Fact, Conclusions of Law and Order (“Consent Agreement”).  
14 Respondent acknowledges that he has the right to consult with legal counsel regarding  
15 this matter.

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

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

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

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

8           6. All admissions made by Respondent are solely for final disposition of this  
9 matter and any subsequent related administrative proceedings or civil litigation involving  
10 the Board and Respondent. Therefore, said admissions by Respondent are not intended  
11 or made for any other use, such as in the context of another state or federal government  
12 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or  
13 any other state or federal court.

14           7. Upon signing this agreement, and returning this document (or a copy thereof) to  
15 the Board's Executive Director, Respondent may not revoke the acceptance of the  
16 Consent Agreement. Respondent may not make any modifications to the document. Any  
17 modifications to this original document are ineffective and void unless mutually approved  
18 by the parties.

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

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

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

4 11. Any violation of this Consent Agreement constitutes unprofessional conduct  
5 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("violating a formal order,  
6 probation, consent agreement or stipulation issued or entered into by the board or its  
7 executive director under this chapter") and 32-1451.

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

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MARK R. HEMP HILL, M.D.

5/4/07  
Date \_\_\_\_\_

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**FINDINGS OF FACT**

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

4           2.     Respondent is the holder of license number 24566 for the practice of  
5 allopathic medicine in the State of Arizona.

6           3.     The Board initiated case number MD-06-0770A after receiving information  
7 that Respondent may be abusing drugs.

8           4.     On September 22, 2006, Respondent met with Board Staff and the Board's  
9 contracted addictionologist ("Addictionologist") for an investigational interview. As a result  
10 of the interview, Respondent was issued an Interim Order for biological fluid testing and  
11 hair analysis.

12          5.     Following the interview, Addictionologist received a telephone call from  
13 Respondent stating he ordered Ephedrine over the internet and was in close proximity to a  
14 friend who uses methamphetamines. Based on this new information, Addictionologist  
15 recommended Respondent undergo an inpatient evaluation. On September 22, 2006,  
16 Respondent was ordered to undergo an inpatient evaluation for substance abuse within  
17 seven days.

18          6.     On September 27, 2006, Respondent's drug screen results were positive for  
19 amphetamine and methamphetamine. As a result, Respondent entered into an Interim  
20 Consent Agreement for Practice Restriction on September 29, 2006, prohibiting him from  
21 practicing clinical medicine or any medicine involving direct patient care and from  
22 prescribing any form of treatment including prescription medications.

23          7.     On October 3, 2006, Respondent underwent a two day inpatient evaluation.  
24 Respondent's diagnosis at discharge was Amphetamine Dependence with  
25

1 recommendations that he participate in a 90 day residential treatment program specifically  
2 designed to address the needs of a licensed professional.

3 8. On October 9, 2006, Respondent entered the residential treatment program.  
4 Respondent completed treatment and was discharged on January 12, 2007. The  
5 discharge summary from the treatment program recommended Respondent enter the  
6 Board's Monitored Aftercare Program ("MAP") and follow up with psychiatric monitoring.  
7 The discharge summary also recommended Respondent could return to work on February  
8 1, 2007 with no exposure to intoxicants.

9 9. On January 17, 2007, Respondent met with Board Staff and Addictionologist  
10 to discuss MAP and sign an Interim Consent Agreement to Participate in MAP.  
11 Respondent entered into MAP; however, the Interim Practice Restriction remained in  
12 effect.

13 10. On January 24, 2007, the Board ordered Respondent to obtain a  
14 Neuropsychological Evaluation. On February 5, 2007, Respondent underwent the  
15 evaluation. The discharge summary revealed Respondent is functioning in the superior  
16 range of intellectual functioning, his neuropsychological functioning is in the normal range  
17 and he has the ability to function safely.

18 11. On March 1, 2007, Board Staff reviewed the Neuropsychological Evaluation  
19 results and recommended termination of the Interim Practice Restriction

#### 20 **CONCLUSIONS OF LAW**

21 1. The Arizona Medical Board possesses jurisdiction over the subject matter  
22 hereof and over Respondent.

23 2. The conduct and circumstances described above constitute unprofessional  
24 conduct pursuant to A.R.S. § 32-1401(27)(f) ("[h]abitual intemperance in the use of alcohol  
25 or habitual substance abuse.").

1 **ORDER**

2 IT IS HEREBY ORDERED that:

3 1. Respondent is placed on probation for **five years** with the following terms  
4 and conditions:

5 **2. a.** Respondent shall submit quarterly declarations under penalty of perjury on  
6 forms provided by the Board, stating whether there has been compliance with all  
7 conditions of probation. The declarations shall be submitted on or before the 15th of  
8 March, June, September and December of each year, beginning on or before September,  
9 2007.

10 **b.1. Participation.** Respondent shall promptly enroll in and participate in the  
11 Board's program for the treatment and rehabilitation of physicians who are impaired by  
12 alcohol or drug abuse ("MAP"). Respondent's participation in MAP may be unilaterally  
13 terminated with or without cause at the Board's discretion at any time after the issuance of  
14 this Order.

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

22 **3. 12 Step or Self-Help Group Meetings.** Respondent shall attend  
23 ninety 12-step meetings or other self-help group meetings appropriate for substance  
24 abuse and approved by Board Staff, for a period of ninety days beginning not later than  
25 either (a) the first day following Respondent's discharge from chemical dependency

1 treatment or (b) the date of this Order.

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

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

19           a.     “*Emergency*” means a serious accident or sudden illness that, if not  
20 treated immediately, may result in a long-term medical problem or loss of  
21 life.

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

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

4 7. If a controlled substance is prescribed, dispensed, or is administered  
5 to Respondent by any person other than PCP, Respondent shall notify the PCP in writing  
6 within 48 hours and notify the MAP Director immediately. The notification shall contain all  
7 information required for the medication log entry specified in paragraph 8. Respondent  
8 shall request that the notification be made a part of the medical record. This paragraph  
9 does not authorize Respondent to take any *Medication* other than in accordance with  
10 paragraph 6.

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

- 17 a. Name and dosage of *Medication* taken or administered;
- 18 b. Date taken or administered;
- 19 c. Name of prescribing or administering physician;
- 20 d. Reason *Medication* was prescribed or administered.

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

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

25 10. **Biological Fluid Collection.** During all times that Respondent is

1 physically present in the State of Arizona and such other times as Board Staff may direct,  
2 Respondent shall promptly comply with requests from Board Staff or MAP Director to  
3 submit to witnessed biological fluid collection. If Respondent is directed to contact an  
4 automated telephone message system to determine when to provide a specimen,  
5 Respondent shall do so within the hours specified by Board Staff. For the purposes of  
6 this paragraph, in the case of an in-person request, "promptly comply" means  
7 "immediately." In the case of a telephonic request, "promptly comply" means that, except  
8 for good cause shown, Respondent shall appear and submit to specimen collection not  
9 later than two hours after telephonic notice to appear is given. The Board in its sole  
10 discretion shall determine good cause.

11           **11.** Respondent shall provide Board Staff in writing with one telephone  
12 number that shall be used to contact Respondent on a 24 hour per day/seven day per  
13 week basis to submit to biological fluid collection. For the purposes of this section,  
14 telephonic notice shall be deemed given at the time a message to appear is left at the  
15 contact telephone number provided by Respondent. Respondent authorizes any person  
16 or organization conducting tests on the collected samples to provide testing results to the  
17 Board and the MAP Director.

18           **12.** Respondent shall cooperate with collection site personnel regarding  
19 biological fluid collection. Repeated complaints from collection site personnel regarding  
20 Respondent's lack of cooperation regarding collection may be grounds for termination  
21 from MAP.

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

1 specimen or from responding to communications from the Board. The notice shall state  
2 the reason for the intended absence from home or office, and shall provide a telephone  
3 number that may be used to contact Respondent.

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

7           **15. Examination.** Respondent shall submit to mental, physical, and  
8 medical competency examinations at such times and under such conditions as directed  
9 by the Board to assist the Board in monitoring Respondent's ability to safely perform as a  
10 physician and Respondent's compliance with the terms of this Order.

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

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

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

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

20           **20. Relapse, Violation.** In the event of chemical dependency relapse by  
21 Respondent or Respondent's use of drugs or alcohol in violation of the Order,  
22 Respondent shall promptly enter into an Interim Consent Agreement for Practice  
23 Restriction that requires, among other things, that Respondent not practice medicine until  
24 such time as Respondent successfully completes long-term inpatient or residential  
25 treatment program for chemical dependency designated by Board Staff and obtains

1 affirmative approval from the Board or the Executive Director to return to the practice of  
2 medicine. Prior to approving Respondent's request to return to the practice of medicine,  
3 Respondent may be required to submit to witnessed biological fluid collection, undergo  
4 any combination of physical examination, psychiatric or psychological evaluation and/or  
5 successfully pass the special purpose licensing examination or the Board may conduct  
6 interviews for the purpose of assisting it in determining the ability of Respondent to safely  
7 return to the practice of medicine. **In no respect shall the terms of this paragraph**  
8 **restrict the Board's authority to initiate and take disciplinary action for violation of**  
9 **this Order.**

10           21. Notice Requirements.

11           (A) Respondent shall immediately provide a copy of this Order to all  
12 employers and all hospitals and free standing surgery centers where Respondent  
13 currently has privileges. Within 30 days of the date of this Order, Respondent shall  
14 provide the Board with a signed statement of compliance with this notification  
15 requirement. Upon any change in employer or upon the granting of privileges at  
16 additional hospitals and free standing surgery centers, Respondent shall provide the  
17 employer, hospital or free standing surgery center with a copy of this Order. Within 30  
18 days of a change in employer or upon the granting of privileges at additional hospitals and  
19 free standing surgery centers, Respondent shall provide the Board with a signed  
20 statement of compliance with this notification requirement.

21           (B) Respondent is further required to notify, in writing, all employers,  
22 hospitals and free standing surgery centers where Respondent currently has or in the  
23 future gains employment or privileges, of a chemical dependency relapse, use of drugs or  
24 alcohol in violation of this Order and/or entry into a treatment program. Within seven days  
25 of any of these events Respondent shall provide the Board written confirmation of

1 compliance with this notification requirement.

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

3           **23. Out-of-State.** In the event Respondent resides or practices as a  
4 physician in a state other than Arizona, Respondent shall participate in the rehabilitation  
5 program sponsored by that state's medical licensing authority or medical society.  
6 Respondent shall cause the monitoring state's program to provide written reports to the  
7 Board regarding Respondent's attendance, participation, and monitoring. The reports  
8 shall be due quarterly on or before the 15th day of March, June, September, and  
9 December of each year, until the Board terminates this requirement in writing. The  
10 monitoring state's program and Respondent shall immediately notify the Board if  
11 Respondent: a) is non-compliant with any aspect of the monitoring requirements; b)  
12 relapses; c) tests positive for controlled substances; d) has low specific gravity urine drug  
13 test(s), missed and/or late urine drug tests, or otherwise rejected urine drug tests; and e)  
14 is required to undergo any additional treatment.

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

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

19           **26.** Respondent shall **immediately obtain a treating psychiatrist**  
20 approved by Board Staff and shall **remain in treatment with the psychiatrist until**  
21 **further order of the Executive Director.** Respondent shall instruct the psychiatrist to  
22 release to Board Staff, upon request, all records relating to Respondent's treatment, and  
23 to submit quarterly written reports to Board Staff regarding diagnosis, prognosis,  
24 medications, and recommendations for continuing care and treatment of Respondent.  
25

1 The reports shall be submitted on or before the 15th day of March, June, September and  
2 December of each year, beginning on or before July, 2007.

3 3. Obey All Laws

4 Respondent shall obey all state, federal and local laws, all rules governing the  
5 practice of medicine in Arizona, and remain in full compliance with any court order  
6 criminal probation, payments and other orders.

7 4. Tolling

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

15 5. This Order is the final disposition of case number MD-06-0770A.

16 DATED AND EFFECTIVE this 8th day of June, 2007.



18 ARIZONA MEDICAL BOARD

19  
20 By [Signature]  
21 TIMOTHY C. MILLER, J.D.  
Executive Director

22 ORIGINAL of the foregoing filed  
23 this 8th day of June, 2007 with:

24 Arizona Medical Board  
25 9545 E. Doubletree Ranch Road  
Scottsdale, AZ 85258

EXECUTED COPY of the foregoing mailed

1 this 30 day of June, 2007 to:

2 Mark R. Hemphill, M.D.  
3 Address of Record

4 Chris Camp

5 Investigational Review

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