BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **W. NEIL CHLOUPEK, M.D.** Holder of License No. 4553 For the Practice of Medicine in the State of Arizona	Docket No. 04A-4553-MDX-res Case No. MD-03-0248 MD-04-0081A **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR LICENSE REVOCATION, STAYED AND INDEFINITE SUSPENSION.**

On October 14, 2004, this matter came before the Arizona Medical Board ("Board") for oral argument and consideration of the Administrative Law Judge (ALJ) Brian Brendan Tully's proposed Findings of Fact and Conclusions of Law and Recommended Order. W. Neil Chloupek, M.D. ("Respondent") was notified of the Board's intent to consider this matter on the aforementioned date at the Board's public meeting. Respondent appeared personally and was not represented by counsel. The State was represented by Assistant Attorney General Stephen A. Wolf. Christine Cassetta, of the Solicitor General's Section of the Attorney General's Office, was present and available to provide independent legal advice to the Board.

The Board, having considered the ALJ's report and the entire record in this matter hereby issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Arizona Medical Board ("Board") is the duly constituted authority for licensing and regulating the practice of allopathic medicine in the State of Arizona.

2. W. Neil Chloupek, M.D., ("Respondent") is the holder of License No. 4553 issued by the Board for the practice of allopathic medicine in the State of Arizona.

3. In addition to his practice of family medicine, Respondent is trained and certified since 1987 in the practice of addiction medicine.

4. A preliminary matter addressed at the commencement of the hearing was the Board's Motion for Leave to Amend, which was granted.[1] The Complaint and Notice of Hearing is amended to include the following allegation:

> On or about January 10, 2003, the patient [John Doe] once again telephoned Respondent and asked him to prescribe more medication for tension headaches. The patient also reported to Respondent that he had written several prescriptions for Percocet in the name of his nurse practitioner, who filled the prescriptions and returned them to John Doe, who then diverted the Percocet tablets for his mother's use. Despite that admission, Respondent prescribed 6 tablets of Vicoden [sic], the patient's addictive drug of choice, which was negligence or [sic] was or might have been harmful or dangerous to the patient's health.

5. Patient John Doe is a physician licensed to practice allopathic medicine in the State of Arizona.

6. In the mid-1990's, Patient John Doe self-reported to the Board that he had abused opoid medications.

7. Following successful in-patient treatment, Patient John Doe entered into a confidential agreement to participate in the Board's monitored aftercare program ("MAP") to monitor his recovery from substance abuse.

8. In compliance with that agreement, the patient asked Respondent to become his sole treating physician, which Respondent agreed to do.

9. The Board terminated Patient John Doe's monitoring agreement in April 2001.

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[1] Respondent initially objected to the motion but later withdrew his objection.

10. During the course of treating Patient John Doe, Respondent became aware that Dr. Doe had developed his substance abuse problem by self-prescribing Vicodin to treat his headaches.

11. On or about November 13, 2001, Dr. Doe telephoned Respondent and asked him to prescribe some medication for tension headaches. Respondent prescribed 24 tablets of Darvocet-N 100 for the patient, which was negligent and was or might have been harmful or dangerous to the patient's health.

12. On or about February 26, 2002, Dr. Doe again telephoned Respondent and asked him to prescribe more medication for tension headaches. Respondent prescribed 14 tablets of Darvocet-N 100 for the patient, which was negligent and was or might have been harmful or dangerous to the patient's health.

13. On or about July 24, 2002, Respondent prescribed 30 tablets of Xanax to Dr. Doe for anxiety and stress, which was negligent and was or might have been harmful or dangerous to the patient's health.

14. On or about January 10, 2003, Dr. Doe once again telephoned Respondent and asked him to prescribe more medication for tension headaches. The patient also reported to Respondent that he had written several prescriptions for Percocet in the name of his nurse, who filled the prescriptions and returned them to John Doe, who then diverted the Percocet tablets for his mother's use. Despite that admission, Respondent prescribed 6 tablets of Vicoden, the patient's addictive drug of choice, which was negligent and was or might have been harmful or dangerous to the patient's health.

15. On or about January 12, 2003, Dr. Doe reported to Board Staff that he had written several prescriptions for Percocet in the name of his nurse, but diverted a portion of those medications to his mother and for his own use.

16. On or about January 14, 2003, Dr. Doe telephoned Respondent and asked him to prescribe some sleeping pills for stress over a death in the family. Respondent prescribed 12 tablets of Ambien for the patient, which was negligent and was or might have been harmful or dangerous to the patient's health.

17. Before prescribing the above-described controlled substance medications to Dr. Doe, Respondent failed to obtain an adequate history or perform a physical examination of Dr. Doe to determine the status of his continued recovery from substance abuse, which was negligent and was or might have been harmful or dangerous to the patient. Respondent's contacts with Dr. Doe were by telephone.

18. The standard of care for prescribing a controlled substance for the complaint of headache in a patient with a known history of substance abuse is to conduct a face-to-face interview and do a physical examination. If an analgesic medication is necessary, the standard of care provides that it not be the patient's drug of choice or known addiction.

19. Respondent fell below the standard of care when he prescribed Vicodin to Dr. Doe on January 20, 2003 because it is noted to be his known drug of addiction on th`e Northwest Mutual Disability evaluation dated April 27, 1997 and signed by Respondent.

20. Respondent fell below the standard of care by not personally evaluating or examining Dr. Doe at the time he prescribed the above-described medications.

21. There is credible evidence that Dr. Doe had relapsed prior to January 20, 2003.

22. David Greenberg, M.D. and Michel Sucher, M.D. are the contracted administrators of the Board's monitored aftercare program ("MAP").

23. On March 31, 2003, Board Staff conducted an investigational interview concerning Respondent's care and treatment of Dr. Doe.

24. During that interview, Respondent admitted to Dr. Greenberg that he used alcohol frequently and that he took Schedule II and III narcotics, which were prescribed by other physicians, despite Respondent's history of addiction and poly-substance abuse.

25. On August 4, 2003, the Board's Executive Director issued a Confidential Interim Order in Case No. MD-03-0248 requiring Respondent to undergo an in-patient evaluation at a Board-approved evaluation facility and any treatment recommended as a result of that evaluation.

26. On or about August 14, 2003, Respondent appealed the issuance of the Confidential Interim Order to the Board.

27. Respondent's appeal was placed on the Board's August 14, 2003 meeting agenda. After reviewing the evidence presented, including the contents of Respondent's appeal, the Board voted to uphold the Executive Director's action of issuing the Confidential Interim Order.

28. On August 18, 2003 the Board, through its Executive Director, issued a written Denial of Appeal of Executive Director Action.

29. Respondent underwent a comprehensive addictive disease and psychiatric assessment at Talbot Recovery Campus ("Talbot") from July 29, 2003 through August 1, 2003.

30. The Talbot Assessment Report dated September 22, 2003, contains the following diagnoses reached by the assessment committee:

AXIS I:	Opiate dependence and amphetamine dependence by history Depressive disorder, NOS
AXIS II:	Narcissistic personality features

AXIS III:	Systemic hypertension under treatment History of hyperlipidemia History of pulmonary embolus History of decreased homocystine History of degenerative disc disease with surgery at L5-S1. History of degenerative joint disease in the knee with replacement of both and complications on the left History of benign prostatic hypertrophy History of allergy to Vancomycin and NSAIDS
AXIS IV:	Severe
AXIS V:	GAF 40 currently

31. The Talbot assessment committee made the following recommendations:

1. Refrain from using alcohol in any form and to take any other mood altering substance only under the direct supervision of his approved physician (see number 3). Dr. Chloupek should continue to refrain from self-prescribing.
2. Combination of drug and alcohol monitoring and compliance with recovery plan to help Dr. Chloupek remain in recovery.
3. Supervision of medications under the direction of a single physician, who has an understanding of recovery and addiction. Dr. Chloupek should work with Dr. Sucher to find an approved referral.
4. We suggest a consultation with an approved pain management doctor to determine if there are alternative non-narcotic treatment options for his chronic pain syndrome.
5. We suggest a consultation with an approved psychiatrist to determine if there are alternative non-stimulant treatment options for his depression
6. Follow up for evaluation of elevated blood pressure, lipids and GGT.
7. We suggest that Dr. Chloupek may return to work, but he should complete the above-mentioned assessments/consultations as soon as possible.

32. Respondent received an Internal Medicine Evaluation at Talbot. The evaluation report dated September 17, 2003 reflects an admission date of September 8, 2003 and a date of service as September 9, 2003.

33. The Internal Medicine Evaluation outlines Respondent's history of drug addiction. He was treated by Dr. Talbot at the Talbot Recovery Campus at Ridgeview Institute in 1984. He had previously been treated at St. Luke's Hospital in Missouri. After treatment Respondent attended AA.

34. Respondent had both his knees replaced in 1999. He experienced complications and has had a total of five surgeries to his knees.

35. The Internal Medicine Evaluation report by George M. MacNabb, M.D., contains the following diagnoses:

AXIS I:	History of poly-substance dependence Patient is taking alcohol, Ritalin and hydrocodone. The question to be decided is whether any or all of these might represent relapse.
AXIS II:	Deferred to Dr. Blank.
AXIS III:	Systemic hypertension under treatment. History of hyperlipidemia. History of pulmonary embolus History of decreased homocystine. History of degenerative disc disease with surgery at L5-S1. History of degenerative joint disease in the knees with replacement of both and complications on the left, as described. History of benign prostatic hypertrophy. History of allergy to Vancomcycin and NSAIDS.
AXIS IV:	Severity of psychosocial stressors: Deferred to Dr. Blank.
AXIS V:	Deferred to Dr. Blank.

36. Dr. MacNabb made the following comment in his evaluation:

> It is always surprising when a person in recovery is on several mood-altering substances, even when they are prescribed. He is on Ritalin for depression and has intention of remaining on it. He said that he is on alcohol for hypertriglyceridemia but then changed that to his being on it to lower his LDL. I had noted that people who have hypertriglyceridemia are usually told to avoid alcohol in their treatment. He is on prescribed hydrocodone, which he may need because of his problem with NSAIDS. It might be reasonable, but the use of Ritalin and the alcohol are certainly questionable.

37. On September 8, 2002, Susan Blank, M.D., performed a psychiatric evaluation of Respondent. Dr. Blank made the following assessment, among others:

> Of concern is the elevated dose of Ritalin at 120 mg over a three-year period of time and [Respondent's] reluctance to have a trial off of the medication or to consider changing to another antidepressant. Also of concern is that he is using alcohol on a very daily basis, again presumably for the treatment of elevated cholesterol and triglycerides. However, this raises concern giving [sic] history of addiction in the past. Also of concern is recent use of narcotics for treatment of chronic pain. While he does have a history of difficulty with NSAIDs, because of their affects on his kidneys, he reports needing to obtain pain relief.

38. Dr. Blank made the following diagnoses:

AXIS I:	History of narcotic and amphetamine dependence, rule out relapse. History of depression.
AXIS II:	Deferred.
AXIS III:	History of elevated blood pressure. Elevated lipids. Status post knee replacement. Status post pulmonary embolus. Chronic pain syndrome.
AXIS IV:	Severe
AXIS V:	Current GAF: 50.

39. The Talbot assessment committee issued its report dated September 22, 2003.

40. On November 10, 2003, a second investigational interview was conducted by Board Staff after receiving the evaluation report from Talbot. There were concerns about the accuracy of the report because there were factual errors, such as inaccurate dates of attendance for Respondent, and because one of the findings was amended after Respondent's counsel contacted the evaluation facility about the report.

41. At the second investigational interview, Respondent presented a letter dated May 15, 2002 from David S. Burgoyne, Sr., M.D., who was his

psychiatrist at the time. Dr. Burgoyne advised in the letter that Respondent had been diagnosed as having adult ADHD and that he was being treated with Ritalin 20 mg. 6 tabs daily. A closer inspection of the letter reveals that the "2" in 20 mg. was handwritten over a "1" in 10 mg. There was no initial next to the change to indicate that it was an intentional alteration.

42. After the second investigational interview, Dr. Greenberg had concerns that Respondent had not disclosed to either Dr. Burgoyne or to the Talbot assessment committee that he not only had a history of Ritalin abuse, but in fact had been arrested for Ritalin abuse in 1985. When confronted with the evidence of his past history of Ritalin abuse at the second investigational interview, Respondent stated that he forgot about his history of Ritalin abuse and arrest.

43. Dr. Greenberg recommended that Respondent immediately cease practicing and enter into a long-term residential program which treats chemical dependency relapse in health care professionals. Dr. Greenberg further recommended that if Respondent did not do this, then he should return to Talbot immediately and submit for further evaluation with the further information gathered in the Board's investigation to be digested by the Talbot staff in formulating a final diagnosis.

44. By letter dated November 13, 2003, Board Staff forwarded to Respondent's counsel a Request for License Inactivation with Cause and Order Inactivating License with Cause for Respondent's signature. The letter explained that because Respondent had previously been in the MAP and the Board's addiction specialist had determined that Respondent had relapsed, the Request for Inactivation was Respondent's only available option pursuant to A.R.S. §32-1452(F).

45. By letter dated November 17, 2003, Respondent, through counsel, declined to execute the Request for Inactivation.

46. On November 18, 2003, the Board's Executive Director issued a second Confidential Interim Order requiring Respondent to undergo in-patient evaluation at another Board-approved facility.

47. In November 2003 Respondent filed a complaint against the Board and its Executive Director with the Arizona Ombudsman/Citizens' Aide. In his complaint, Respondent alleged the following:

- The Board denied his request to be placed in the agenda.
- The Board ordered him to obtain an in-patient evaluation without sufficient grounds.
- The Executive Director issued an order that required him to obtain a second evaluation without allowing him sufficient time to appear.

48. By letter dated November 28, 2003, Patrick M. Shannahan, Ombudsman/Citizens' Aide, advised the Board's Executive Director of Respondent's complaint and his office's investigation.

49. By letter dated December 2, 2003, Dr. Blank wrote that the Talbot assessment committee, after further discussion, issued an addendum to its September 22, 2003 report. The assessment committee opined that Respondent's use of alcohol constituted a relapse. The Clinical Recommendations were amended as follows:

> 2. Combination of drug and alcohol monitoring and compliance with a recovery plan to help Dr. Chloupek <u>regain his recovery</u>.
>
> 7. We suggest that Dr. Chloupek may return to work, <u>provided he completes the above mentioned assessments/consultations as soon as possible and receives treatment for his relapse</u>. (emphasis in the original)

50. Respondent was evaluated at Hazelden – Springbrook. The discharge summary dated December 11, 2003 contains the following discharge diagnoses:

AXIS I:	Alcohol abuse, rule out dependence. History of opiate dependence, in sustained full remission, although it is difficult to know if Dr. Chloupek's use of Lorcet has any kind of relapse with it. Stimulant dependence in sustained partial remission.
AXIS II:	Deferred.
AXIS III:	There are multiple medical problems, chiefly those involving several knee replacement surgeries with a history of chronic pain.
AXIS IV:	Stressors are quite severe, including legal problems with the Board, financial problems, and some ongoing internal family problems that are secondary to his alcohol use.
AXIS V:	GAF 45. Dr. Chloupek has some serious problems that are related to his professional as well as personal life, and these may precipitate an ongoing problem with his alcohol and drugs.

51. Hazelden recommended that Respondent obtain intensive residential treatment.

52. After the results of the second evaluation were received, Respondent refused to ask the Board to place his license on inactive status with cause.

53. On December 18, 2003, the Board held a teleconference meeting to consider the summary suspension of Respondent's license. As a result of that meeting, the Board issued a third Confidential Interim Order requiring Respondent to undergo another in-patient evaluation at either Sierra Tucson or the Betty Ford Center.

54. Respondent was admitted to the Betty Ford Center on January 19, 2004.

55. The Betty Ford Center assessment concluded that Respondent did meet the criteria for poly-substance dependence with Ritalin, Ambien and alcohol.

56. During the Betty Ford Center evaluation, Respondent admitted that he had relapsed and acknowledged that his use of alcohol and Ritalin was inappropriate given his diagnosis. However, it was not until the conclusion of his evaluation at the Betty Ford Center that Respondent fully exposed the extent of his relapses and the period of time over which they occurred. In addition, Respondent had not shared this information with the other evaluating facilities.

57. Garrett O'Connor, M.D., the medical director of the Betty Ford Center's Licensed Professional's Treatment Program, concluded, among other things, that "[w]hile there is not doubt about [Respondent's] diagnosis of Alcohol, Ritalin and Benzodiazepine Dependence (continuous pattern), the question of whether or not his clinical depression represents a co-morbid psychiatric condition, or a concomitant of his chemical dependence, remains to be clarified."

58. The Betty Ford Center's multi-disciplinary team evaluation recommended that Respondent "be admitted to a hospital for the purpose of observing him for as much time as might be necessary to make an accurate differential diagnosis."

59. After the results of the third evaluation were received, Respondent refused to ask the Board to place his license on inactive status with cause.

60. On February 13, 2004, the Board summarily restricted Respondent's license to practice allopathic medicine. The summary restriction is that Respondent shall not practice clinical medicine or any medicine involving direct patient care, and is prohibited from prescribing any form of treatment including prescription

medications until he has successful completed an in-patient treatment program approved by Board Staff and enters a monitored aftercare program.

61. By letter dated February 13, 2004, David N. Boyer, M.D., Respondent's subsequent psychiatrist, advised Respondent's counsel that he was currently treating Respondent. Dr. Boyer's diagnoses at that time were Depression, Unipolar, recurrent as well as Attention Deficit Disorder, by history.

62. On or about February 24, 2004, the Board, through its Executive Director, issued an Amended Interim Findings of Fact, Conclusions of Law and Order for Summary Restriction of License.

63. An expedited post-suspension hearing was scheduled for April 1-2, 2004 before the Office of Administrative Hearings, an independent agency, as required by A.R.S. § 41-1092.11(B).

64. On March 17, 2004, the scheduled hearing was vacated at Respondent's request, and the matter remanded from the Office of Administrative Hearings to the Board for further action.

65. On or about June 16, 2004, the Board resubmitted the investigation of Respondent to the Office of Administrative Hearings for formal hearing. On June 21, 2004, the Board filed a Complaint and Notice of Hearing at the Office of Administrative Hearings.

66. By letter dated August 3, 2004, Mr. Shannahan, the Ombudsman/Citizens Aide, advised Respondent of the conclusions reached by his office on the investigation of Respondent's complaint against the Board and its Executive Director.

67. The Arizona Ombudsman/Citizen's Aide did not substantiate Respondent's complaint that the Board did not follow prescribed procedures in his case and did not have sufficient grounds to order an in-patient evaluation.

68. The Arizona Ombudsman/Citizen's Aid did not conclude that there was a conflict of interest by Drs. Greenberg and Sucher of MAP because "the doctors filed reports of their investigation and the Board actually made the decision to place someone in the program." The doctors administered the MAP, monitored the progress of participants and reported the results to the Board. The doctors did not provide services to MAP participants.

69. By letter dated August 4, 2004, Mr. Shannahan advised the Board's Executive Director that his office found Respondent's allegations to be unsubstantiated.

70. At the hearing, Dr. Boyer testified that Respondent had not disclosed that he had been arrested in May, 1985 while sitting in his car in a parking lot having injected Lidocaine and having possession of syringes, vials of Zylocaine, Nubain and a diverted container of Ritalin.

71. Dr. Boyer was unaware that the Board had sanctioned Respondent in 1985 and that Respondent had been treated for Ritalin dependence.

72. Dr. Boyer only became aware of Respondent's three recent evaluations during the weekend before his testimony. Dr. Boyer had not received or reviewed the final report from the Betty Ford Center.

73. At the hearing, Dr. O'Connor testified about in-patient treatment for Respondent. Respondent asked Dr. O'Connor the following question: "Did you not tell me long term treatment would be detrimental to my recovery?" Dr. O'Connor gave the following answer:

> At that time I said I thought the 30 days or so, as I put in my report, would be good. A lot has changed since then. You've been at war with the Board and war with yourself. You did tend to go back to the position that you had taken prior to the evaluation. I think, you know, the only way that you will be able to recover completely – whether or not you practice or not is another issue – your disease will continue to cripple you personally and professionally and every other way unless you come to terms with it.

74. In response to questioning from Respondent, Dr. O'Connor also explained the basis for his opinion that Respondent was impaired. Dr. O'Connor noted that Respondent had self-prescribed his SSRI's before seeing Dr. Burgoyne. Dr. O'Connor further noted that Respondent misrepresented his history to Dr. Burgoyne by saying that he had been given Ritalin as a child, which he had not been, and not advising Dr. Burgoyne of his drug-related arrest. Dr. O'Connor stated that no reasonable doctor would have prescribed Ritalin to Respondent under those circumstances. It was important to Dr. O'Connor that Respondent had dropped out of 12-step recovery, stopped seeing his sponsor and started to drink again.

75. Respondent had relapsed and is impaired.

PREVIOUS BOARD ACTIONS AGAINST RESPONDENT

76. On or about November 13, 1973, the Board issued Respondent a decree of censure for using injectable amphetamines in the treatment of obesity, which was not an acceptable medical practice.

77. On or about August 16, 1979, Respondent entered into a stipulated order with the Board wherein he surrendered his DEA controlled substance registration certificate and agreed not to administer, dispense or prescribe controlled substances until he appeared before the Board for an informal interview concerning his personal and professional use of controlled substances.

78. On or about September 6, 1979, Respondent appeared before the Board for an informal interview. As a result of that interview, the Board found that

"for a period of years [Respondent] had prescribed in the name of his wife and relatives and otherwise obtained, through bulk orders and prescriptions labeled 'for office use,' substantial quantities of the drugs Percodan, Demerol and Talwin, for self-medication." The Board placed Respondent on indefinite probation ("first probation order") subject to the following terms and conditions. Respondent would: (a) surrender his DEA controlled substance registration certificate for class II and III substances; (b) not administer, dispense or prescribe Talwin; (c) not prescribe any medication for himself and (d) obtain psychiatric care and treatment for his substance abuse.

79. On or about December 8, 1979, the Board issued an Order of Continuing Probation extending the first probation order.

80. On or about June 7, 1980, the Board issued another Order of Continuing Probation extending the first probation order.

81. On or about December 13, 1980, while subject to the first probation order, the Board found that Respondent "has again been self-medicating - using, among other drugs, amphetamines, Valium, Librium and Talwin." Respondent agreed to surrender his DEA controlled substance registration certificate for class IV and V substances. The Board continued Respondent on indefinite probation.

82. On or about March 14, 1981, the Board found that Respondent had violated the first probation order "by obtaining the drugs Tussend and Darvocet-N100, Schedule III and IV Substances, respectively, and using same for self-medication." The Board continued Respondent on indefinite probation, ordering him once again not to prescribe any medications for himself and to obtain psychiatric care and treatment for his substance abuse.

83. On or about June 6, 1981, the Board issued an Order Continuing Probation that extended the Respondent's probation.

84. On or about September 12, 1981, the Board issued an Order Continuing Probation that extended the Respondent's probation.

85. On or about April 3, 1982, the Board found that Respondent had again violated the first probation order "by using prescription-only drugs (i.e., Lasix, Tagament and Lidocaine) which were not administered, dispensed or prescribed by his treating physician." In lieu of formal hearing for that violation, Respondent entered into a stipulated order with the Board for a two-week suspension of his medical license.

86. On or about June 5, 1982, the Board issued an Order Terminating Probation. The Board found "that, by reason of his probation, WILLIAM NEIL CHLOUPEK, M.D., has been rehabilitated and educated to the extent that his current practice of medicine no longer constitutes a threat to the health, welfare and safety of the public or the State of Arizona."

87. On or about June 29, 1982, the Board issued a Stipulation and Order in which Respondent agreed to "abstain completely from the personal use or possession of any controlled substances...or prescription-only drugs...except as dispensed, prescribed or administered to him by his treating physician." Respondent also agreed to submit to random biological fluid testing as required by the Board. The June 29, 1982 Stipulation and Order was replaced by similar orders on or about June 30, 1983 and September 27, 1983.

88. On or about May 10, 1985, the Board conducted an emergency informal interview with Respondent after receiving information that he had self-medicated with prescription-only medications. As a result of that interview,

Respondent entered into another stipulated order with the Board, admitted that "he obtained prescription-only medications, specifically Ritalin, Nubain, Zylocaine and Lidocaine, through fraud and deceit and, further, that he self-administered such medications" in violation of the September 27, 1983 Order. Respondent agreed to the suspension of his medical license pending successful completion of inpatient treatment for chemical dependency.

89. On or about October 25, 1985, after having successfully completed a four-month in-patient treatment program for chemical dependency, the Board found that Respondent had obtained controlled substances and prescription-only drugs for his own use and habitually abused the drugs Ritalin, Zylocaine, Nubain and Lidocaine, both in violation of the September 27, 1983 Order.

90. Respondent entered into a stipulated order with the Board lifting the suspension of his medical license and placing him on probation for seven years subject to the following terms and conditions. Respondent agreed to (a) abstain completely from the personal use or possession of controlled substances, prescription-only drugs and over-the-counter drugs, except those prescribed, administered or dispensed by his designated treating physician; (b) abstain completely from the use of alcoholic beverages; (c) submit to random biological fluid testing as required by the Board; and (d) obtain on-going counseling and therapy ("second probation order").

91. On or about January 29, 1994, the Board terminated the September 5, 1994 stipulated order.

92. On or about August 29, 1996, the Board issued Respondent a non-disciplinary letter of concern for miscoding a benign lesion as malignant.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter and Respondent. A.R.S. § 32-1401 et seq.

2. The Board has the burden of proof in this matter. The standard of proof is a preponderance of the evidence.

3. The conduct and circumstances described above constitute unprofessional conduct by Respondent pursuant to A.R.S. § 32-1401(24)(f) (habitual intemperance in the use of alcohol or habitual substance abuse).

4. The conduct and circumstances described above constitute unprofessional conduct by Respondent pursuant to A.R.S. § 32-1401(24)(q) (any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public).

5. Negligence is a failure to exercise that degree of care, skill and learning expected of a reasonable, prudent physician or specialist in Arizona in the same or similar circumstances. A.R.S. §§ 1-215(25) and 12-563.

6. Gross negligence is negligence that creates an unreasonable risk of bodily harm and involves a high degree of probability that substantial bodily harm will result. It implied a reckless indifference to the results of an act. *Caldwell v. Ariz. Bd. of Dental Exam'rs*, 137 Ariz. 396, 400, 670 P.2d 1220, 1224 (App. 1983).

7. The conduct and circumstances described above constitute unprofessional conduct by Respondent pursuant to A.R.S. § 32-1401(24(ll) (conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or death of the patient).

8. In determining appropriate disciplinary action, the Board shall consider all previous disciplinary and non-disciplinary actions against a licensee, A.R.S. § 32-1451(U).

9. When a doctor of medicine is impaired by alcohol or drug abuse, and was under a board stipulation or probationary order that is no longer in effect, the doctor must ask the Board to place his or her license in inactive status with cause. If the doctor fails to do that, the Board shall summarily suspend his or her medical license. A.R.S. §§ 32-1451(D) and § 32-1452(F). The evidence of record supports the Board's summary restriction of Respondent's medical license to protect the public health, safety and welfare.

10. Pursuant to A.R.S. § 32-1452(G), the Board shall revoke the license of a doctor of medicine if that doctor is impaired by alcohol or drug abuse and was previously placed on probation for alcohol or drug abuse and that probation is no longer in effect. The statute further provides that the Board may accept the surrender of the license if the doctor admits in writing to being impaired by alcohol or drug abuse.

11. Based upon the entire record in this matter, Respondent may be assessed the costs of the formal hearing in this matter, as provided by A.R.S. § 32-1451(M).

ORDER

Based upon the Findings of Fact and Conclusions of Law, the Board hereby enters the following Order:

1. That Respondent, W. Neil Chloupek, M.D.'s License No. 4553 for the practice of allopathic medicine in the State of Arizona is hereby revoked. However,

revocation is stayed and Respondent's license is indefinitely suspended until he complies with the following:

a. Respondent must, within one year of the effective date of this Order successfully complete long-term in-patient treatment at a Board-approved treatment center. At the conclusion of this treatment Respondent shall apply to the Board to be placed in the Monitored Aftercare Program ("MAP") pursuant to the recommendations of the treatment center and to terms defined by the Board. Respondent may also ask that the Suspension be lifted and he be allowed to return to practice.

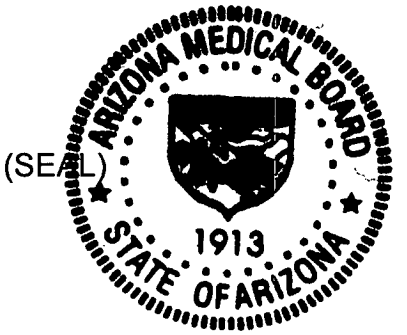
b. If, one year from the effective date of this Order, Respondent has not successfully completed long-term in-patient treatment at a Board-approved treatment center, the stay shall be lifted and Respondent's license revoked.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review by filing a petition with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09. The petition must set forth legally sufficient reasons for granting a rehearing. A.C.C. R4-16-102. Service of this order is effective five (5) days after date of mailing. If a motion for rehearing is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing is required to preserve any rights of appeal to the Superior Court.

Dated this 18th day of October, 2004.



(SEAL)

ARIZONA MEDICAL BOARD

By: Barry A. Cassidy
Barry A. Cassidy, Ph.D., P.A.-C
Executive Director

Original of the foregoing filed this 18th day of October, 2004, with:

Arizona Medical Board
9545 East Doubletree Ranch Road
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Copy of the foregoing filed this 18th day of October, 2004, with:

Cliff J. Vanell, Director
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Executed copy of the foregoing mailed by Certified Mail this 18th day of October, 2004, to:

W. Neil Chloupek, M.D.
(address of record)

Executed copy of the foregoing mailed this 18th day of October, 2004, to:

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