

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **HOWARD D. TOFF, M.D.**

4 Holder of License No. **19314**  
5 For the Practice of Allopathic Medicine  
6 In the State of Arizona.

**Case No. MD-19-0219A**

**INTERIM CONSENT AGREEMENT  
FOR PRACTICE RESTRICTION**

7 **INTERIM CONSENT AGREEMENT**

8 Howard D. Toff, M.D. ("Respondent") elects to permanently waive any right to a  
9 hearing and appeal with respect to this Interim Consent Agreement for Practice Restriction  
10 and consents to the entry of this Order by the Arizona Medical Board ("Board").

11 **INTERIM FINDINGS OF FACT**

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

14 2. Respondent is the holder of License No. 19314 for the practice of allopathic  
15 medicine in the State of Arizona.

16 3. The Board initiated case number MD-19-0219A after receiving a complaint  
17 regarding Respondent's care and treatment of a 26 year-old male patient ("Patient 1")  
18 alleging inappropriate prescribing and medication management; and failure to address  
19 aberrant behavior and patient non-compliance.

20 4. Patient 1 was an established patient of Respondent's practice with a history  
21 of anxiety and depression, and diagnoses of ADD and Substance Use Disorder.

22 5. After a gap in treatment, Patient 1 returned to Respondent's care on  
23 December 22, 2016. Respondent diagnosed Patient 1 with ADHD and prescribed Adderall  
24 XR 20mg in the morning. At an office visit dated March 22, 2016, Respondent  
25 documented that Patient 1 was on a regimen of Lithium, Gabapentin, Clonazepam,

1 Temazepam and Ambien. Respondent continued to treat Patient 1 through February 19,  
2 2019 with these medications as well as others including duloxetine and sertraline. Patient  
3 1's medical record includes concerns regarding psychosis and self-harm, as well as  
4 substance abuse including emergency room treatment for substance induced psychosis in  
5 September, 2018.

6 6. After Patient 1 was discharged, Respondent resumed his treatment, with  
7 medications including Adderall, clonazepam and zolpidem, with ongoing substance  
8 misuse concerns noted. As of the last date of treatment reviewed, Patient 1 reported that  
9 he had been consuming alcohol. Respondent discussed drug treatment rehabilitation with  
10 Patient 1 and Patient 1's father agreed to keep and dispense Patient 1's Adderall.

11 7. Patient 2 was a 46 year-old female with past medical history including  
12 Bipolar I disorder, insomnia and ADHD who was an established patient of the clinic. As of  
13 March, 2016, Patient 2's diagnoses also included cannabis and alcohol use disorder in  
14 sustained remission. Respondent prescribed Patient 2 medications including Diazepam,  
15 Temazepam, Ambien and Adderall. Patient 2's record included documentation of multiple  
16 requests for early refills and dosage increases.

17 8. Patient 3 was a 37 year-old female with past medical history including  
18 depression, chronic mood lability, dysthymia and self-reported ADHD who was and  
19 established patient of Respondent's practice. As of 2018, Patient 3 was noted to have a  
20 past history of drug and alcohol abuse. Respondent prescribed Respondent medications  
21 including alprazolam, and Adderall. Patient 3's record included documentation of early  
22 refill requests and dispensing medications in amounts higher than recommended use.

23 9. Patient 4 was a 35 year-old male with past medical history of anxiety,  
24 insomnia and GI complaints who established care with Respondent in 2016. Respondent  
25 prescribed Patient 4 medications including Zoloft, alprazolam, clonazepam and tramadol.

1 Patient 4's record included documentation of multiple early refill requests and inability to  
2 adhere to attempted taper protocols.

3 10. A Medical Consultant ("MC") who reviewed Respondent's care of Patient 1  
4 noted deviations from the standard of care including prescribing controlled substances to a  
5 patient with substance use disorder without adequate clinical rationale, diagnosing ADD  
6 without adequate clinical criteria and by failing to adequately respond to aberrant  
7 behaviors and non-compliance.

8 11. An MC who reviewed Respondent's care of Patients 2, 3 and 4 noted  
9 deviations from the standard of care including prescribing combinations of controlled  
10 substances without adequate clinical rationale, prescribing early refills without clinical  
11 rationales and failure to recognize and respond to aberrant behaviors and non-  
12 compliance.

13 12. Actual harm was identified by the MC for each patient including that Patients  
14 2 and 4 meet the criteria for iatrogenic substance use disorders, Patient 1's substance  
15 misuse was perpetuated and Patient 3 demonstrated signs of benzodiazepine  
16 dependence.

17 13. There was the potential for patient harm for all patients including that Patient  
18 1 was at risk of the complications from inadequately treated substance and alcohol  
19 dependence, Patients 2, 3 and 4 were at risk of medication overdose, and Patients 2 and  
20 3 were at risk of cardiac side effects and fatal ventricular arrhythmias.

21 14. The aforementioned information was presented to the investigative staff, the  
22 medical consultant and the lead Board member. All reviewed the information and concur  
23 that the interim consent agreement to restrict Respondent's controlled substance  
24 prescribing pending the outcome of a formal interview or formal hearing is appropriate.

25 15. The investigation into this matter is pending Board review.

1 **INTERIM CONCLUSIONS OF LAW**

2 1. The Board possesses jurisdiction over the subject matter hereof and over  
3 Respondent.

4 2. Pursuant to A.R.S. § 32-1405(C)(25) the Executive Director has authority to  
5 enter into a consent agreement when there is evidence of danger to the public health and  
6 safety.

7 3. Pursuant to A.A.C. R4-16-504, the Executive Director may enter into an  
8 interim consent agreement when there is evidence that a restriction is needed to mitigate  
9 imminent danger to the public's health and safety. Investigative staff, the Board's medical  
10 consultant and the lead Board member have reviewed the case and concur that an interim  
11 consent agreement is appropriate.

12 **INTERIM ORDER**

13 IT IS HEREBY ORDERED THAT:

14 1. Respondent is prohibited from prescribing controlled substances in the State  
15 of Arizona pending the outcome of a formal interview or formal hearing in this matter.

16 2. Respondent may request, in writing, release and/or modification of this  
17 Interim Consent Agreement. The Executive Director, in consultation with and agreement of  
18 the lead Board member and the Chief Medical Consultant, has the discretion to determine  
19 whether it is appropriate to release Respondent from this Interim Consent Agreement.

20 3. The Board retains jurisdiction and may initiate new action based upon any  
21 violation of this Interim Consent Agreement, including, but not limited to, summarily  
22 suspending Respondent's license.

23 4. Because this is an Interim Consent Agreement and not a final decision by  
24 the Board regarding the investigation, it is subject to further consideration by the Board.

25 5. This Interim Consent Agreement shall be effective on the date signed by the

1 Board's Executive Director.

2 **RECITALS**

3 Respondent understands and agrees that:

4 1. The Board, through its Executive Director, may adopt this Interim Consent  
5 Agreement, or any part thereof, pursuant to A.R.S. § 32-1405(C)(25) and A.A.C. R4-16-  
6 504.

7 2. Respondent has read and understands this Interim Consent Agreement as  
8 set forth herein, and has had the opportunity to discuss this Interim Consent Agreement  
9 with an attorney or has waived the opportunity to discuss this Interim Consent Agreement  
10 with an attorney. Respondent voluntarily enters into this Interim Consent Agreement and  
11 by doing so agrees to abide by all of its terms and conditions.

12 3. By entering into this Interim Consent Agreement, Respondent freely and  
13 voluntarily relinquishes all rights to an administrative hearing on the matters set forth  
14 herein, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or  
15 any other administrative and/or judicial action, concerning the matters related to the  
16 Interim Consent Agreement.

17 4. Respondent understands that this Interim Consent Agreement does not  
18 constitute a dismissal or resolution of this matter or any matters that may be currently  
19 pending before the Board and does not constitute any waiver, express or implied, of the  
20 Board's statutory authority or jurisdiction regarding this or any other pending or future  
21 investigations, actions, or proceedings. Respondent also understands that acceptance of  
22 this Interim Consent Agreement does not preclude any other agency, subdivision, or  
23 officer of this State from instituting civil or criminal proceedings with respect to the conduct  
24  
25

1 that is the subject of this Interim Consent Agreement. Respondent further does not  
2 relinquish his/her rights to an administrative hearing, rehearing, review, reconsideration,  
3 judicial review or any other administrative and/or judicial action, concerning the matters  
4 related to a final disposition of this matter, unless Respondent affirmatively does so as part  
5 of the final resolution of this matter.

6 5. Respondent acknowledges and agrees that upon signing this Interim  
7 Consent Agreement and returning it to the Board's Executive Director, Respondent may  
8 not revoke acceptance of this Interim Consent Agreement or make any modifications to it.  
9 Any modification of this original document is ineffective and void unless mutually approved  
10 by the parties in writing.

11 6. Respondent understands that this Interim Consent Agreement shall not  
12 become effective unless and until it is signed by the Board's Executive Director.

13 7. Respondent understands and agrees that if the Board's Executive Director  
14 does not adopt this Interim Consent Agreement, he will not assert in any future  
15 proceedings that the Board's consideration of this Interim Consent Agreement constitutes  
16 bias, prejudice, prejudgment, or other similar defense.

17 8. Respondent understands that this Interim Consent Agreement is a public  
18 record that may be publicly disseminated as a formal action of the Board, and that it shall  
19 be reported as required by law to the National Practitioner Data Bank.

20 9. Respondent understands that this Interim Consent Agreement does not  
21 alleviate Respondent's responsibility to comply with the applicable license-renewal  
22 statutes and rules. If this Interim Consent Agreement remains in effect at the time  
23 Respondent's allopathic medical license comes up for renewal, Respondent must renew  
24  
25

1 Respondent's allopathic medical license comes up for renewal, Respondent must renew  
2 the license if Respondent wishes to retain the license. If Respondent elects not to renew  
3 the license as prescribed by statute and rule, Respondent's license will not expire but  
4 rather, by operation of law (A.R.S. § 32-3202), become suspended until the Board takes  
5 final action in this matter. Once the Board takes final action, in order for Respondent to be  
6 licensed in the future, Respondent must submit a new application for licensure and meet  
7 all of the requirements set forth in the statutes and rules at that time.

8 10. Respondent understands that any violation of this Interim Consent  
9 Agreement constitutes unprofessional conduct under A.R.S. § 32-1401(27)(s) ("[V]iolating  
10 a formal order, probation, consent agreement or stipulation issued or entered into by the  
11 board or its executive director under this chapter.").

12  
13   
14 HOWARD D. TOFF, M.D.

DATED: 3/15/2021

15 DATED this 15<sup>th</sup> day of Mar, 2021.

16 ARIZONA MEDICAL BOARD

17  
18 By   
19 Patricia E. McSorley  
20 Executive Director

1 EXECUTED COPY of the foregoing e-mailed  
this 16<sup>th</sup> day of March, 2021 to:

2 Michele G. Thompson, Esq.  
3 Udall Law Firm, LLP  
4 4801 East Broadway Boulevard, Suite 400  
5 Tucson, Arizona 85711-3609  
6 Attorney for Respondent

7 ORIGINAL of the foregoing filed  
8 this 16<sup>th</sup> day of March, 2021 with:

9 Arizona Medical Board  
10 1740 West Adams, Suite 4000  
11 Phoenix, Arizona 85007

12 Michelle Robles  
13 Board staff  
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