

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **MICHAEL J. FITZMAURICE, M.D.**

4 Holder of License No. 36511
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-20-0470A

**ORDER FOR DECREE OF CENSURE,
CIVIL PENALTY AND PROBATION;
AND CONSENT TO THE SAME**

7 Michael J. Fitzmaurice, M.D. ("Respondent") elects to permanently waive any right
8 to a hearing and appeal with respect to this Order for Decree of Censure, Civil Penalty and
9 Probation; admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to
10 the entry of this Order by the Board.

11 **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 number 36511 for the practice of
15 allopathic medicine in the State of Arizona.

16 3. The Board initiated case number MD-20-0470A after receiving notification
17 from the Board's Physician Health Program ("PHP") Contractor that Respondent was non-
18 compliant with monitoring requirements of his Stipulated Rehabilitation Agreement ("SRA")
19 entered in MD-19-0340A. Respondent subsequently self-reported use of alcohol in
20 violation of his SRA.

21 4. The PHP Monitor reported that Respondent submitted three dilute urine drug
22 screens, and as a result, ordered a PEth test on May 29, 2020. On June 4, 2020 the
23 results were returned as positive. When the PHP Monitor contacted Respondent, he
24 admitted to drinking during vacation, and then consuming a large volume of water in order
25 to rehydrate.

1 5. The SRA states in relevant part, "In the event of the use of drugs or alcohol
2 by Respondent in violation of this SRA, Respondent shall promptly enter into an Interim
3 Consent Agreement for Practice Restriction requiring Chemical Dependency Treatment to
4 be completed at a PHP-approved facility."

5 6. Effective June 9, 2020 Respondent entered into an Interim Consent
6 Agreement for Practice Restriction.

7 7. Respondent subsequently completed inpatient treatment at a Board-
8 approved facility ("Facility") and was discharged with staff approval. After completion of
9 treatment, Respondent attended a post-treatment assessment with the PHP Contractor.
10 Based on Respondent's treatment and prognosis, the Contractor opined that Respondent
11 was safe to practice, provided he enter into a monitoring agreement with the Board, and
12 comply with recommendations for aftercare.

13 8. On June 29, 2020, Respondent entered into an Interim Consent Agreement
14 for PHP participation with term and conditions of monitoring consistent with the
15 recommendations of the PHP Contractor in his post-treatment assessment report.
16 Respondent is in compliance with the terms of his PHP monitoring.

17 **CONCLUSIONS OF LAW**

18 a. The Board possesses jurisdiction over the subject matter hereof and over
19 Respondent.

20 b. The conduct and circumstances described above constitute unprofessional
21 conduct pursuant to A.R.S. § 32-1401(27)(f) ("Exhibiting a pattern of using or being under
22 the influence of alcohol or drugs or a similar substance while practicing medicine or to the
23 extent that judgment may be impaired and the practice of medicine detrimentally
24 affected.").

1 c. The conduct and circumstances described above constitute unprofessional
2 conduct pursuant to A.R.S. § 32-1401(27)(s) (“Violating a formal order, probation, consent
3 agreement or stipulation issued or entered into by the board or its executive director under
4 the provisions of this chapter.”).

5 **ORDER**

6 IT IS HEREBY ORDERED THAT:

7 1. Respondent is issued a Decree of Censure.
8 2. Respondent is assessed an \$8000.00 Civil Penalty. The Civil Penalty shall
9 be paid, by certified funds, within 90 days of the effective date of this Order.

10 3. Respondent is placed on Probation for a period of five years¹ with the
11 following terms and conditions:

12 4. Respondent shall not consume alcohol or any food or other substance
13 containing poppy seeds or alcohol.

14 5. Respondent shall not take any illegal drugs or mood altering medications
15 unless prescribed for a legitimate therapeutic purpose.

16 6. Respondent shall continue to participate in any personalized aftercare
17 programs or activities as recommended by the Contractor in his post-treatment
18 assessment report. Respondent shall report on those activities as requested by the PHP,
19 including executing any releases necessary to allow the PHP to monitor his participation
20 and communicate directly with and obtain records from the treating providers for those
21 aftercare activities. Respondent shall be responsible for all costs of aftercare, including
22 costs associated with compliance of this Board Order.

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¹ Respondent's probation shall be retroactive to June 29, 2020.

1 7. Respondent shall promptly obtain a Primary Care Physician ("PCP") and
2 shall submit the name of the physician to the PHP Contractor in writing for approval.
3 Except in an Emergency, Respondent shall obtain medical care and treatment only from
4 the PCP and from health care providers to whom the PCP refers Respondent. Respondent
5 shall promptly provide a copy of this Order to the PCP. Respondent shall also inform all
6 other health care providers who provide medical care or treatment that Respondent is
7 participating in the PHP. "Emergency" means a serious accident or sudden illness that, if
8 not treated immediately, may result in a long-term medical problem or loss of life.

9 8. All prescriptions for controlled substances shall be approved by the PHP
10 Contractor prior to being filled except in an Emergency. Controlled substances prescribed
11 and filled in an emergency shall be reported to the PHP within 48 hours. Respondent shall
12 take no Medication unless the PCP or other health care provider to whom the PCP refers
13 Respondent prescribes and the PHP Contractor approves the Medication. Respondent
14 shall not self-prescribe any Medication. "Medication" means a prescription-only drug,
15 controlled substance, and over-the counter preparation, other than plain aspirin, plain
16 ibuprofen, and plain acetaminophen.

17 9. Respondent shall attend a relapse prevention outpatient program for a
18 duration and frequency recommended by the PHP Contractor, unless Respondent is
19 excused by the relapse program facilitator for good cause. The relapse prevention group
20 facilitators shall submit monthly reports to the PHP regarding Respondent's attendance
21 and progress.

22 10. Respondent shall continue treatment with a PHP Contractor approved
23 addiction psychiatrist or addiction medicine specialist as recommended by the evaluating
24 facility and shall comply with any and all treatment recommendations, including taking any
25 and all prescribed medications. Respondent shall instruct the treating professional to

1 submit quarterly written reports to the PHP regarding diagnosis, prognosis, current
2 medications, recommendation for continuing care and treatment, and ability to safely
3 practice medicine. The reports shall be submitted quarterly to the PHP, the
4 commencement of which to be determined by the PHP Contractor. Respondent shall
5 provide the professional with a copy of this Order. Respondent shall pay the expenses for
6 treatment and be responsible for paying for the preparation of the quarterly reports. At the
7 expiration of one year or anytime thereafter, Respondent may submit a written request to
8 the PHP Contractor requesting termination of the requirement that Respondent remain in
9 treatment with an addiction psychiatrist or addiction medicine specialist. The decision to
10 terminate will be based in part upon the treating professional's recommendation for
11 continued care and treatment.

12 11. If not already completed, Respondent shall attend ninety 12-step meetings or
13 other self-help group meetings appropriate for substance abuse and approved by the PHP,
14 for a period of ninety days. Upon completion of the ninety meetings in ninety days,
15 Respondent shall participate in a 12-step recovery program or other self-help program
16 appropriate for substance abuse as recommended by the PHP. Respondent shall attend a
17 minimum of three 12-step or other self-help program meetings per week. Two meetings
18 per month must be Caduceus meetings. Respondent must maintain a log of all self-help
19 meetings.

20 12. Respondent shall submit to random biological fluid, hair and/or nail testing for
21 the remainder of this Order (as specifically directed below) to ensure compliance with the
22 PHP. Respondent shall at all times maintain sufficient hair and nail length to allow for
23 timely completion of requested testing.

24 13. Respondent shall provide the PHP Contractor in writing with one telephone
25 number that shall be used to contact Respondent on a 24 hour per day/seven day per

1 week basis to submit to biological fluid, hair, and/or nail testing to ensure compliance with
2 the PHP. For the purposes of this section, telephonic notice shall be deemed given at the
3 time a message to appear is left at the contact telephone number provided by
4 Respondent. Respondent authorizes any person or organization conducting tests on the
5 collected samples to provide testing results to the PHP Contractor. Respondent shall
6 comply with all requirements for biological fluid, hair, and/or nail collection. Respondent
7 shall pay for all costs for the testing.

8 14. Respondent shall provide the PHP Contractor with written notice of any plans
9 to travel out of state.

10 15. If not already completed, Respondent shall successfully complete a PHP
11 approved 36 hour alcohol/drug awareness education class.

12 16. Respondent shall immediately notify the Board and the PHP Contractor in
13 writing of any change in office or home addresses and telephone numbers.

14 17. Respondent provides full consent for the PHP Contractor to discuss the
15 Respondent's case with the Respondent's PCP or any other health care providers to
16 ensure compliance with the PHP.

17 18. The relationship between the Respondent and the PHP Contractor is a direct
18 relationship. Respondent shall not use an attorney or other intermediary to communicate
19 with the PHP Contractor on participation and compliance issues. All inquiries must be
20 directed to Board staff.

21 19. Respondent shall be responsible for all costs, including costs associated with
22 participating in the PHP, at the time service is rendered or within 30 days of each invoice
23 sent to the Respondent. An initial deposit of two (2) months PHP fees is due upon
24 entering the program. Failure to pay either the initial PHP deposit or monthly fees 60 days
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1 after invoicing will be reported to the Board by the PHP Contractor and may result in
2 disciplinary action.

3 20. Respondent shall appear in person before with the PHP Contractor for
4 interviews upon request, upon reasonable notice.

5 21. Respondent shall immediately provide a copy of this Order to all employers,
6 hospitals and free standing surgery centers where Respondent currently has or in the
7 future gains or applies for employment or privileges. Within 30 days of the date of this
8 Order, Respondent shall provide the PHP with a signed statement of compliance with this
9 notification requirement. Respondent is further required to notify, in writing, all employers,
10 hospitals and free standing surgery centers where Respondent currently has or in the
11 future gains or applies for employment or privileges of a violation of this Order.

12 22. In the event Respondent resides or practices as a physician in a state other
13 than Arizona, Respondent shall participate in the rehabilitation program sponsored by that
14 state's medical licensing authority or medical society. Respondent shall cause the
15 monitoring state's program to provide written quarterly reports to the PHP Contractor
16 regarding Respondent's attendance, participation, and monitoring. The monitoring state's
17 program and Respondent shall immediately notify the PHP Contractor if Respondent is
18 non-compliant with any aspect of the monitoring requirements or is required to undergo
19 any additional treatment.

20 23. The PHP Contractor shall immediately notify the Board if Respondent is non-
21 compliant with any aspect of this Order or is required to undergo any additional treatment.

22 24. In the event of a chemical dependency relapse by Respondent or
23 Respondent's use of controlled substances or alcohol in violation of this Order,
24 Respondent shall promptly enter into an Interim Consent Agreement for Practice
25 Restriction that requires, among other things, that Respondent not practice medicine until

1 such time as Respondent successfully completes long-term inpatient treatment designated
2 by the PHP Contractor and obtains affirmative approval from the Executive Director, in
3 consultation with the Lead Board Member and Chief Medical Consultant, to return to the
4 practice of medicine. Prior to approving Respondent's request to return to the practice of
5 medicine, Respondent may be required to undergo any combination of physical
6 examinations, psychiatric or psychological evaluations. In no respect shall the terms of this
7 paragraph restrict the Board's authority to initiate and taken disciplinary action for any
8 violation of this Order.

9 25. Respondent shall obey all state, federal and local laws, all rules governing
10 the practice of medicine in Arizona, and remain in full compliance with any court ordered
11 criminal probation, payments and other orders.

12 26. Prior to the termination of Probation, Respondent must submit a written
13 request to the Board for release from the terms of this Order. Respondent's request for
14 release will be placed on the next pending Board agenda, provided a complete submission
15 is received by Board staff no less than 30 days prior to the Board meeting. Respondent's
16 request for release must provide the Board with evidence establishing that he/she has
17 successfully satisfied all of the terms and conditions of this Order. The Board has the sole
18 discretion to determine whether all of the terms and conditions of this Order have been
19 met or whether to take any other action that is consistent with its statutory and regulatory
20 authority.

21 27. This Order supersedes any and all Consent Agreements previously entered
22 into by Respondent and the Board regarding this matter.

1 28. The Board retains jurisdiction and may initiate new action against
2 Respondent based upon any violation of this Order. A.R.S. § 32-1401(27)(s).

3 DATED AND EFFECTIVE this 8th day of April, 2021.

4 ARIZONA MEDICAL BOARD

5
6 By Patricia E. McSorley
7 Patricia E. McSorley
8 Executive Director

9 **CONSENT TO ENTRY OF ORDER**

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

13 2. Respondent acknowledges and agrees that this Order is entered into freely
14 and voluntarily and that no promise was made or coercion used to induce such entry.

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

19 4. The Order is not effective until approved by the Board and signed by its
20 Executive Director.

21 5. All admissions made by Respondent in this Order are solely for final
22 disposition of this matter and any subsequent related administrative proceedings or civil
23 litigation involving the Board and Respondent. Therefore, said admissions by Respondent
24 are not intended or made for any other use, such as in the context of another state or
25 federal government regulatory agency proceeding, civil or criminal court proceeding, in the
State of Arizona or any other state or federal court.

1 6. Notwithstanding any language in this Order, this Order does not preclude in
2 any way any other State agency or officer or political subdivision of this state from
3 instituting proceedings, investigating claims, or taking legal action as may be appropriate
4 now or in the future relating to this matter or other matters concerning Respondent,
5 including but not limited to, violations of Arizona's Consumer Fraud Act. Respondent
6 acknowledges that, other than with respect to the Board, this Order makes no
7 representations, implied or otherwise, about the views or intended actions of any other
8 state agency or officer or political subdivisions of the State relating to this matter or other
9 matters concerning Respondent.

10 7. Upon signing this agreement, and returning this document (or a copy thereof)
11 to the Board's Executive Director, Respondent may not revoke the consent to the entry of
12 the Order. Respondent may not make any modifications to the document. Any
13 modifications to this original document are ineffective and void unless mutually approved
14 by the parties.

15 8. This Order is a public record that will be publicly disseminated as a formal
16 disciplinary action of the Board and will be reported to the National Practitioner's Data
17 Bank and on the Board's web site as a disciplinary action.

18 9. If any part of the Order is later declared void or otherwise unenforceable, the
19 remainder of the Order in its entirety shall remain in force and effect.

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

23 11. Any violation of this Order constitutes unprofessional conduct and may result
24 in disciplinary action. A.R.S. § § 32-1401(27)(s) ("[v]iolating a formal order, probation,
25

1 consent agreement or stipulation issued or entered into by the board or its executive
2 director under this chapter.") and 32-1451.

3 12. **Respondent has read and understands the conditions of Probation.**

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DATED: 3-23-21

6 MICHAEL J. FITZMAURICE, M.D.

7
8 EXECUTED COPY of the foregoing mailed
9 this 8th day of April, 2021 to:

10 Michael J. Fitzmaurice, M.D.
11 Address of Record

12 Physician Health Program
13 Address on File

14 ORIGINAL of the foregoing filed
15 this 8th day of April, 2021 with:

16 Arizona Medical Board
17 1740 West Adams, Suite 4000
18 Phoenix, Arizona 85007

19 
20 Board staff