

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

Case No. MD-20-1032A

3 **MARK R. AUSTEIN, M.D**

**ORDER FOR SURRENDER OF
LICENSE AND CONSENT TO THE
SAME**

4 Holder of License No. 14196
5 For the Practice of Medicine
6 In the State of Arizona.

7 Mark R. Austein, M.D. ("Respondent"), elects to permanently waive any right to a
8 hearing and appeal with respect to this Order for Surrender of License; admits the
9 jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of this Order
10 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 14196 for the practice of
15 allopathic medicine in the State of Arizona.

16 3. The Board initiated case number MD-20-1032A after receiving notification
17 from a pharmacy chain that its locations would no longer fill prescriptions for controlled
18 substances written by Respondent. Based on the complaint, Board staff requested
19 Medical Consultant ("MC") review of Respondent's care and treatment of three patients.

20 4. MK was a 56 year-old male with a history of opioid use disorder complicated
21 by chronic back pain taking sublingual buprenorphine on a long-term basis for opioid use
22 disorder ("MOUD"). Respondent prescribed MK medications including Soma 350mg twice
23 daily and buprenorphine 24mg daily. In April 2019, Respondent noted that MK had
24 obtained some Suboxone in order to escalate his dosage, and advised the patient to
25 communicate with him regarding this.

1 5. HS was a 38 year-old female with opioid use disorder, anxiety, depression,
2 and chronic pain. Respondent prescribed HS medications including buprenorphine 24mg
3 daily, Buspar 15mg three times daily, and Celexa 40mg daily. HS received multiple early
4 refills of buprenorphine during Respondent's course of treatment.

5 6. RP was a 63 year-old male with opioid use disorder, chronic back pain, and
6 unspecified psychiatric issues. Respondent prescribed RP buprenorphine 24mg daily. RP
7 was concurrently prescribed other medications including, alprazolam 2mg, zolpidem 10mg
8 daily, and dextroamp-amphetamine 30mg twice daily by other providers. Respondent
9 documented a discussion with RP's psychiatrist regarding polypharmacy and the
10 psychiatrist's position that the medications were necessary.

11 7. The MC identified concerns regarding Respondent's documentation
12 including insufficient and inconsistent documentation. Additionally, the MC noted multiple
13 occurrences where Respondent documented review of the Controlled Substance
14 Prescription Monitoring Profile ("CSPMP") without corresponding record in the CSPMP
15 itself.

16 8. Additionally, the MC identified deviations from the standard of care including
17 providing all three patients with multiple early refills of controlled substance prescriptions
18 without clinical rationale and by prescribing buprenorphine without naloxone to all three
19 patients in an outpatient setting without justification.

20 9. There was potential for patient harm I that all patients were at risk of
21 overdose and diversion.

22 10. On or about August 2, 2021 Respondent requested that his DEA registration
23 be placed in retired status.

24 11. Respondent reports that he has retired from the active practice of medicine
25 and requests surrender of his license.

1 **CONCLUSIONS OF LAW**

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

4 2. The conduct and circumstances described above constitute unprofessional
5 conduct pursuant to A.R.S. § 32-1401(27)(e) ("Failing or refusing to maintain adequate
6 records on a patient.").

7 3. The conduct and circumstances described above constitute unprofessional
8 conduct pursuant to A.R.S. § 32-1401(27)(r) ("Committing any conduct or practice that is or
9 might be harmful or dangerous to the health of the patient or the public.").

10 4. The conduct and circumstances described above constitute unprofessional
11 conduct pursuant to A.R.S. § 32-1401(27)(u) ("Knowingly making any false or fraudulent
12 statement, written or oral, in connection with the practice of medicine or if applying for
13 privileges or renewing an application for privileges at a health care institution.").

14 5. The Board possesses statutory authority to enter into a consent agreement
15 with a physician and accept the surrender of an active license from a physician who
16 admits to having committed an act of unprofessional conduct. A.R.S. § 32-1451(T)(2).

17 **ORDER**

18 IT IS HEREBY ORDERED THAT Respondent immediately surrender License
19 Number 14196, issued to Mark R. Austein, M.D., for the practice of allopathic medicine in
20 the State of Arizona, and return his certificate of licensure to the Board.

21 DATED and effective this 9th day of June, 2022.

22
23 ARIZONA MEDICAL BOARD

24 By: Patricia E. McSorley
25 Patricia E. McSorley
Executive Director

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2 **CONSENT TO ENTRY OF ORDER**

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

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

8 3. Although Respondent does not agree that the Findings of Fact set forth in
9 this Consent Agreement are supported by the evidence, Respondent acknowledges that it
10 is the Board's position that, if this matter proceeded to formal hearing, the Board could
11 establish sufficient evidence to support a conclusion that certain of Respondent's conduct
12 constituted unprofessional conduct. Therefore, Respondent has agreed to enter into this
13 Consent Agreement as an economical and practical means of resolving the issues
14 associated with the complaint filed against Respondent. Further, Respondent
15 acknowledges that the Board may use the evidence in its possession relating to this
16 Consent Agreement for purposes of determining sanctions in any further disciplinary
17 matter.

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

22 5. The Order is not effective until approved by the Board and signed by its
23 Executive Director.

24 6. All admissions made by Respondent in this Order are solely for final
25 disposition of this matter and any subsequent related administrative proceedings or civil
litigation involving the Board and Respondent. Therefore, said admissions by Respondent

1 are not intended or made for any other use, such as in the context of another state or
2 federal government regulatory agency proceeding, civil or criminal court proceeding, in the
3 State of Arizona or any other state or federal court.

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

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

18 9. This Order is a public record that will be publicly disseminated as a formal
19 disciplinary action of the Board and will be reported to the National Practitioner's Data
20 Bank and on the Board's web site as a disciplinary action.

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

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11. Respondent has read and understands the terms of this agreement.

~~mark austein~~

Dated: 4-18-22

MARK R. AUSTEIN, M.D.

EXECUTED COPY of the foregoing mailed by
US Mail this 9th day of June, 2022 to:

Mark R. Austein, M.D.
Address of Record

ORIGINAL of the foregoing filed this
9th day of June, 2022 with:

The Arizona Medical Board
1740 West Adams, Suite 4000
Phoenix, Arizona 85007

Michelle Prodes

Board staff