



1           5.       The written narrative to the Board dated May 25, 2021, stated that he was  
2 going home to a friend's house, and asserted, "[i]f the police report states that he was  
3 leaving the hospital then the police report is inaccurate." Respondent stated that he was  
4 scheduled to be on call at the time of the incident, but that the Hospital lacked a  
5 functioning operating room and had not accepted surgical patients in several months.  
6 Respondent's narrative stated, "Consequently, there was no possibility that [Respondent]  
7 would have been required to respond to the hospital on the night of the incident." Lastly,  
8 the narrative noted that there would have been a second surgeon on call who could have  
9 responded in the event that Respondent was contacted but unavailable.

10           6.       Respondent was referred for an assessment with the Board's Physician  
11 Health Program ("PHP") Assessor which was completed on June 18, 2021. During the  
12 assessment, Respondent stated that he was listed as on-call for the Hospital at the time of  
13 the arrest; but noted that the operating room had been closed for several months.  
14 Respondent admitted that while on-call he could have been required to respond to general  
15 surgical questions, or potentially be required to come to the ER or Hospital to assist in  
16 some manner, but stated that this had not occurred all year. Respondent's hair screen  
17 was positive for a controlled substance medication for which Respondent did not have a  
18 prescription. Based on the assessment results, the PHP Assessor opined that  
19 Respondent is safe to practice medicine provided that he enters into the PHP for a period  
20 of up to two years for diagnostic monitoring.

21           7.       On or about October 12, 2021, the Board received documentation from the  
22 Hospital regarding its investigation into Respondent's arrest. The documentation included  
23 notes from an interview conducted with Respondent that occurred on June 7, 2021 and  
24 discussed Respondent's May 25, 2021 written narrative. Respondent acknowledged that  
25 he did initially inform the arresting officer that he was going home from the hospital.

1 Respondent agreed that he did not activate the back-up call system, but denied that he  
2 had received any calls on the date of his arrest.

3 8. On May 2, 2021 at 19:59 Respondent was consulted by an ER physician at  
4 the Hospital regarding a dog bite case. Respondent spoke to the physician and  
5 recommended the patient obtain a surgical consultation. The progress note documenting  
6 Respondent's interaction was signed at 20:20 that same evening.

7 9. On October 28, 2021, Respondent entered into an Interim Consent  
8 Agreement for PHP Participation. Respondent is in compliance with the terms of his PHP  
9 monitoring.

10 10. In a supplemental response dated June 10, 2022, Respondent noted that in  
11 February of 2022, Respondent pled guilty to a misdemeanor DUI and has complied with all  
12 court-ordered penalties. Respondent stated that at the time of his written narrative and the  
13 Hospital interview, he did not recall having participated in the dog bite consultation, and  
14 denied intentionally withholding this information from the Assessor. Respondent stated  
15 that he accepted responsibility for this poor judgment on the night in question.

16 11. During a Formal Interview on this matter, Respondent testified that at the  
17 time he originally reported to the Board that he would not have been required to report to  
18 the Hospital while being on call, he did not intend to be untruthful, but rather did not  
19 remember being called for a consultation. Respondent again expressed remorse for the  
20 error in judgment and stated that he took full responsibility for his actions. Respondent  
21 noted that this occurred during COVID and that consultations such as the one that he  
22 received that evening were very infrequent. When asked about what led to his decision to  
23 consume alcohol, he stated that he was having dinner with friends. Respondent disclosed  
24 that the DUI occurred at approximately 8:00 or 9:00 p.m. and his on-call shift ended the  
25 next morning at 7:00 a.m.



1 2. Respondent is placed on Probation for a period of 2 years<sup>1</sup> with the following terms  
2 and conditions:

3 a. Respondent shall not consume alcohol or any food or other substance  
4 containing poppy seeds or alcohol.

5 b. Respondent shall continue to participate in any personalized aftercare  
6 programs or activities as recommended by the Assessor in his July 2, 2021  
7 Report. Respondent shall report on those activities as requested by the  
8 PHP, including executing any releases necessary to allow the PHP to  
9 monitor his participation and communicate directly with and obtain records  
10 from the treating providers for those aftercare activities. Respondent shall be  
11 responsible for all costs of aftercare, including costs associated with  
12 compliance of this Board Order.

13 c. Respondent shall not take any illegal drugs or mood altering medications.

14 d. All prescriptions for controlled substances shall be approved by the PHP  
15 prior to being filled except in an Emergency. Controlled substances  
16 prescribed and filled in an emergency shall be reported to the PHP within 48  
17 hours. Respondent shall take no Medication unless Respondent's Primary  
18 Care Physician ("PCP") or other health care provider to whom the PCP refers  
19 Respondent prescribes and the PHP approves the Medication. Respondent  
20 shall not self-prescribe any Medication. "Medication" means a prescription-  
21 only drug, controlled substance, and over-the counter preparation, other than  
22 plain aspirin, plain ibuprofen, and plain acetaminophen. "Emergency" means  
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24  
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<sup>1</sup> Respondent's probation shall be retroactive to October 28, 2021.

1 a serious accident or sudden illness that, if not treated immediately, may  
2 result in a long-term medical problem or loss of life.

3 e. Respondent shall submit to random biological fluid, hair and nail testing for  
4 two years from the date of this Order (as specifically directed below) to  
5 ensure compliance with PHP.

6 f. Respondent shall provide the PHP in writing with one telephone number that  
7 shall be used to contact Respondent on a 24 hour per day/seven day per  
8 week basis to submit to biological fluid, hair and/or nail testing to ensure  
9 compliance with PHP. For the purposes of this section, telephonic notice  
10 shall be deemed given at the time a message to appear is left at the contact  
11 telephone number provided by Respondent. Respondent authorizes any  
12 person or organization conducting tests on the collected samples to provide  
13 testing results to the PHP. Respondent shall comply with all requirements  
14 for biological fluid, hair and/or nail collection. Respondent shall pay for all  
15 costs for the testing.  
16

17 g. Respondent shall provide the PHP with written notice of any plans to travel  
18 out of state.

19 h. Respondent shall successfully complete a PHP approved 36 hour  
20 alcohol/drug awareness education class.

21 i. Respondent provides full consent for the PHP to discuss the Respondent's  
22 case with the Respondent's PCP or any other health care providers to  
23 ensure compliance with PHP.  
24  
25

- 1 j. The relationship between the Respondent and the PHP is a direct  
2 relationship. Respondent shall not use an attorney or other intermediary to  
3 communicate with the PHP on participation and compliance issues.
- 4 k. Respondent shall be responsible for all costs, including costs associated with  
5 participating in PHP, at the time service is rendered or within 30 days of each  
6 invoice sent to the Respondent. An initial deposit of two months PHP fees is  
7 due upon entering the program. Failure to pay either the initial PHP deposit  
8 or monthly fees 60 days after invoicing will be reported to the Board by the  
9 PHP and may result in disciplinary action up to and including revocation.
- 10 l. Respondent shall immediately provide a copy of this Order to all employers,  
11 hospitals and free standing surgery centers where Respondent currently has  
12 or in the future gains or applies for employment or privileges. Within 30 days  
13 of the date of this Order, Respondent shall provide the PHP with a signed  
14 statement of compliance with this notification requirement. Respondent is  
15 further required to notify, in writing, all employers, hospitals and free standing  
16 surgery centers where Respondent currently has or in the future gains or  
17 applies for employment or privileges of a violation of this Order.
- 18 m. In the event Respondent resides or practices as a physician in a state other  
19 than Arizona, Respondent shall participate in the rehabilitation program  
20 sponsored by that state's medical licensing authority or medical society.  
21 Respondent shall cause the monitoring state's program to provide written  
22 quarterly reports to the PHP regarding Respondent's attendance,  
23 participation, and monitoring. The monitoring state's program and  
24  
25

1 Respondent shall immediately notify the PHP if Respondent is non-compliant  
2 with any aspect of the monitoring requirements or is required to undergo any  
3 additional treatment.

4 n. The PHP shall immediately notify the Board if Respondent is non-compliant  
5 with any aspect of the monitoring requirements or this Order.

6 o. In the event of the use of drugs or alcohol by Respondent in violation of this  
7 Order, Respondent shall promptly enter into an Interim Consent Agreement  
8 for Treatment at a PHP approved facility. Following the successful  
9 conclusion of treatment, Respondent shall enter into an Interim Consent  
10 Agreement for full participation in PHP. In no respect shall the terms of this  
11 paragraph restrict the Board's authority to initiate and take disciplinary action  
12 for violation of this Order.

13  
14 p. Prior to the termination of Probation, Respondent must submit a written  
15 request to the Board for release from the terms of this Order. Respondent's  
16 request for release will be placed on the next pending Board agenda,  
17 provided a complete submission is received by Board staff no less than 30  
18 days prior to the Board meeting. Respondent's request for release must  
19 provide the Board with evidence establishing that he has successfully  
20 satisfied all of the terms and conditions of this Order. The Board has the  
21 sole discretion to determine whether all of the terms and conditions of this  
22 Order have been met or whether to take any other action that is consistent  
23 with its statutory and regulatory authority.  
24

25 3. The Board retains jurisdiction and may initiate new action against Respondent  
based upon any violation of this Order. ...

1 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

2 Respondent is hereby notified that he has the right to petition for a rehearing or  
3 review. The petition for rehearing or review must be filed with the Board's Executive  
4 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The  
5 petition for rehearing or review must set forth legally sufficient reasons for granting a  
6 rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after  
7 date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed,  
8 the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

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

11 DATED AND EFFECTIVE this 2<sup>nd</sup> day of February, 2023.

12 ARIZONA MEDICAL BOARD

13 By Patricia E. McSorley  
14 Patricia E. McSorley  
Executive Director

15 EXECUTED COPY of the foregoing mailed  
16 this 2<sup>nd</sup> day of February, 2023 to:

17 Xihua Yang, M.D.  
Address of Record

18 David Klink, Esq.  
19 David J. Klink, Attorney at Law  
20 20325 North 51<sup>st</sup> Avenue, Suite 166b  
Glendale, Arizona 85308  
21 Attorney for Respondent

22 ORIGINAL of the foregoing filed  
23 this 2<sup>nd</sup> day of February, 2023 with:

24 Arizona Medical Board  
1740 West Adams, Suite 4000  
Phoenix, Arizona 85007  
25 Michelle Pugh  
Board staff