

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **HERBERT W. JONES, M.D.**

4 Holder of License No. 29347
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-19-0546A

**ORDER FOR LETTER OF REPRIMAND
AND PROBATION; AND CONSENT TO
THE SAME**

7 Herbert W. Jones, M.D. ("Respondent") elects to permanently waive any right to a
8 hearing and appeal with respect to this Order for Letter of Reprimand and Probation;
9 admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of
10 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 No. 29347 for the practice of allopathic
15 medicine in the State of Arizona.

16 3. The Board initiated case number MD-19-0546A after receiving a Disciplinary
17 Action Report from the Federation of State Medical Boards indicating that the Minnesota
18 Board of Medical Practice ("Minnesota Board") indefinitely suspended Respondent's
19 Minnesota medical license.

20 4. Respondent and the Minnesota Board entered into a Stipulation and Order
21 for Indefinite Suspension of Respondent's medical license effective May 11, 2019
22 ("Minnesota Order").

23 5. The Minnesota Order was based on the following grounds: Respondent's
24 non-compliance with the Minnesota Board Participation Agreement and Monitoring Plan
25 for the monitoring of his chemical dependency and mental health by failing to timely enter

1 into a residential program for assessment, failing to complete a required toxicology screen
2 and taking an expired controlled substance; and, Respondent's acknowledgement that he
3 practiced medicine while under the influence of chemicals and failing to complete chart
4 reviews because of his chemical use.

5 6. Based on the above information, Respondent entered into an Interim
6 Consent Agreement for Practice Restriction, effective June 19, 2019 ("Practice
7 Restriction").

8 7. Respondent subsequently petitioned the Minnesota Board for reinstatement
9 of his Minnesota medical license with supporting documentation including proof of
10 monitoring and ongoing therapy. Effective September 14, 2019, Respondent entered into
11 a Stipulation and Order with the Minnesota Board that terminated the Minnesota Order,
12 and placed Respondent on stayed suspension probation contingent upon Respondent's
13 compliance with his Health Professionals Services Program ("HPSP") participation
14 agreement that included terms and conditions of monitoring and treatment.

15 8. On January 23, 2020, Respondent advised Board staff that he had returned
16 to practice in Minnesota and Arizona via teleradiology. Board staff advised Respondent to
17 immediately cease practice under his Arizona license pending receipt of a report from the
18 Minnesota HPSP that Respondent was safe to return to practice. On February 11, 2020,
19 Respondent advised Board staff that from January 7-23, 2020 he read approximately 250
20 examinations under his Arizona license.

21 9. On March 3, 2020, Respondent requested that the Board lift the Practice
22 Restriction. Respondent's request for release included correspondence from the
23 Minnesota HPSP that Respondent was in compliance with the terms and conditions of his
24 HPSP participation agreement.
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1 corresponds directly or indirectly to an act of unprofessional conduct prescribed by this
2 paragraph. The action taken may include refusing, denying, revoking or suspending a
3 license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise
4 limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on
5 probation by that jurisdiction.”).

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

10 **ORDER**

11 IT IS HEREBY ORDERED THAT:

12 1. Respondent is issued a Letter of Reprimand.

13 2. Respondent is placed on Probation for a period of five years¹ with the
14 following terms and conditions:

15 3. Respondent shall continue to comply with the terms and conditions of his
16 HPSP participation agreement. Respondent shall cause the HPSP to provide written
17 quarterly reports to the Board regarding Respondent’s attendance, participation, and
18 monitoring. The HPSP and Respondent shall immediately notify the Board if Respondent
19 is non-compliant with any aspect of the monitoring requirements or is required to undergo
20 any additional treatment. Respondent is responsible for all costs of participation in the
21 HPSP and preparation of the quarterly reports.

22 4. In the event that the HPSP recommends that Respondent enter into the
23 Board’s Physician Health Program (“PHP”), Respondent shall provide the Board proof of
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¹ Respondent’s probation shall be retroactive to March 9, 2020.

1 enrollment with a PHP Contractor for participation in the Board's PHP for a period of five
2 (5) years within 10 days of the date of the HPSP recommendation, and Respondent shall
3 comply with the following minimum terms and conditions:

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

6 b. Respondent shall not take any illegal drugs or mood altering
7 medications unless prescribed for a legitimate therapeutic purpose.

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

15 d. Respondent shall promptly obtain a Primary Care Physician ("PCP")
16 and shall submit the name of the physician to the PHP Contractor in writing for
17 approval. Except in an Emergency, Respondent shall obtain medical care and
18 treatment only from the PCP and from health care providers to whom the PCP
19 refers Respondent. Respondent shall promptly provide a copy of this Order to
20 the PCP. Respondent shall also inform all other health care providers who
21 provide medical care or treatment that Respondent is participating in the PHP.
22 "Emergency" means a serious accident or sudden illness that, if not treated
23 immediately, may result in a long-term medical problem or loss of life.

24 e. All prescriptions for controlled substances shall be approved by the
25 PHP Contractor prior to being filled except in an Emergency. Controlled

1 substances prescribed and filled in an emergency shall be reported to the PHP
2 within 48 hours. Respondent shall take no Medication unless the PCP or other
3 health care provider to whom the PCP refers Respondent prescribes and the
4 PHP Contractor approves the Medication. Respondent shall not self-prescribe
5 any Medication. "Medication" means a prescription-only drug, controlled
6 substance, and over-the counter preparation, other than plain aspirin, plain
7 ibuprofen, and plain acetaminophen.

8 f. If recommended by the PHP Contractor, Respondent shall attend a
9 relapse prevention outpatient program for a duration and frequency
10 recommended by the PHP Contractor, unless Respondent is excused by the
11 relapse program facilitator for good cause. The relapse prevention group
12 facilitators shall submit monthly reports to the PHP regarding Respondent's
13 attendance and progress.

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

23 h. Respondent shall submit to random biological fluid, hair and/or nail
24 testing for the remainder of this Order (as specifically directed below) to
25 ensure compliance with the PHP.

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

11 j. Respondent shall provide the PHP Contractor with written notice of any plans
12 to travel out of state.

13 k. If requested by the PHP, Respondent shall successfully complete a
14 PHP approved 36 hour alcohol/drug awareness education class.

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

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

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

24 o. Respondent shall be responsible for all costs, including costs
25 associated with participating in the PHP, at the time service is rendered or

1 within 30 days of each invoice sent to the Respondent. An initial deposit of
2 two (2) months PHP fees is due upon entering the program. Failure to pay
3 either the initial PHP deposit or monthly fees 60 days after invoicing will be
4 reported to the Board by the PHP Contractor and may result in disciplinary
5 action.

6 p. Respondent shall appear in person before with the PHP Contractor for
7 interviews upon request, upon reasonable notice.

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

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

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1 s. The PHP Contractor shall immediately notify the Board if Respondent
2 is non-compliant with any aspect of this Order or is required to undergo any
3 additional treatment.

4 5. In the event of a chemical dependency relapse by Respondent or
5 Respondent's use of controlled substances or alcohol in violation of this Order,
6 Respondent shall promptly enter into an Interim Consent Agreement for Practice
7 Restriction that requires, among other things, that Respondent not practice medicine until
8 such time as Respondent successfully completes long-term inpatient treatment designated
9 by the PHP Contractor and obtains affirmative approval from the Executive Director, in
10 consultation with the Lead Board Member and Chief Medical Consultant, to return to the
11 practice of medicine. Prior to approving Respondent's request to return to the practice of
12 medicine, Respondent may be required to undergo any combination of physical
13 examinations, psychiatric or psychological evaluations. In no respect shall the terms of this
14 paragraph restrict the Board's authority to initiate and taken disciplinary action for any
15 violation of this Order.

16 6. Respondent shall obey all state, federal and local laws, all rules governing
17 the practice of medicine in Arizona, and remain in full compliance with any court ordered
18 criminal probation, payments and other orders.

19 7. Prior to the termination of Probation, Respondent must submit a written
20 request to the Board for release from the terms of this Order. Respondent's request for
21 release will be placed on the next pending Board agenda, provided a complete submission
22 is received by Board staff no less than 30 days prior to the Board meeting. Respondent's
23 request for release must provide the Board with evidence establishing that he has
24 successfully satisfied all of the terms and conditions of this Order. The Board has the sole
25 discretion to determine whether all of the terms and conditions of this Order have been

1 met or whether to take any other action that is consistent with its statutory and regulatory
2 authority.

3 8. This Order supersedes any and all Consent Agreements previously entered
4 into by Respondent and the Board regarding this matter.

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

7 DATED AND EFFECTIVE this 4th day of September, 2020.

8
9 ARIZONA MEDICAL BOARD

10 By Patricia E. McSorley
11 Patricia E. McSorley
12 Executive Director

13 **CONSENT TO ENTRY OF ORDER**

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

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

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

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

25 5. All admissions made by Respondent are solely for final disposition of this
matter and any subsequent related administrative proceedings or civil litigation involving

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

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

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

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

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

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

4 11. Any violation of this Order constitutes unprofessional conduct and may result
5 in disciplinary action. A.R.S. § § 32-1401(27)(s) (“[v]iolating a formal order, probation,
6 consent agreement or stipulation issued or entered into by the board or its executive
7 director under this chapter.”) and 32-1451.

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

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_____ M.D.
HERBERT W. JONES, M.D.

DATED: 8/16/2020

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EXECUTED COPY of the foregoing mailed
this 4th day of September 2020 to:

14

Herbert W. Jones, M.D.
Address of Record

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ORIGINAL of the foregoing filed
this 4th day of September, 2020 with:

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

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_____ Board staff

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