

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **JAY V. SWANSON, M.D.**

4 Holder of License No. 27669
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-20-0010A

**ORDER FOR LICENSE
REACTIVATION AND PROBATION,
AND CONSENT TO THE SAME**

7 Jay V. Swanson, M.D. ("Respondent"), elects to permanently waive any right to a
8 hearing and appeal with respect to this Order for License Reactivation 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 number 27669 for the practice of
15 allopathic medicine in the State of Arizona.

16 3. The Board initiated case number MD-20-0010A after receiving Respondent's
17 request for license reactivation.

18 4. Respondent participated in the Board's Physician Health Program ("PHP")
19 from September 17, 2002 through September 17, 2007 pursuant to a Stipulated
20 Rehabilitation Agreement ("SRA"). Respondent successfully completed the terms and
21 conditions of the SRA and the SRA was terminated.

22 5. On December 14, 2011 the Board initiated case MD-11-1675A after receipt
23 of a complaint from a pharmacist alleging that Respondent wrote a prescription for
24 hydromorphone for a non-existent patient. During the course of the Board's investigation,
25 Respondent admitted to a relapse of his substance use disorder. Respondent requested

1 that his license be placed on "Inactive with Cause" status, which the Board's Executive
2 Director approved on February 6, 2012.

3 6. On January 6, 2020, Respondent requested reactivation of his license, and
4 was referred for an Assessment with the Board's Physician Health Program ("PHP")
5 Assessor on April 15, 2020 and May 14, 2021. The Assessor opined that Respondent
6 was safe to return to the practice of medicine subject to Respondent's participation in PHP
7 for a period of **five** years, with recommendations for monitoring and aftercare.

8 7. Additionally, on November 18-19, 2020 Respondent attended a competency
9 evaluation with a Board-approved evaluating facility. Based on Respondent's performing
10 and testing results, the Facility reported that Respondent demonstrated several strengths
11 as well as some demonstrated areas of educational need. The Facility recommended that
12 Respondent participate in a structured, Individualized Educational Intervention to address
13 identified areas of need and to assist him in his transition back to practice, including a
14 period of initial observation, use of an educational preceptor and continuing medical
15 education ("CME").

16 8. **Board staff stated that according to the Board's three-strike policy, this**
17 **is Respondent's "second strike."**

18 **CONCLUSIONS OF LAW**

19 1. The Arizona Medical Board possesses jurisdiction over the subject matter
20 hereof and over Respondent.

21 2. The Board has received substantial evidence supporting the Findings of Fact
22 described above and said findings require the Board to either refer the matter for formal
23 hearing to revoke Respondent's license or reactivate Respondent's license and place
24 Respondent on probation for five years with restrictions necessary to assure public safety.
25 A.R.S. § 32-1452(F).

1 **ORDER**

2 IT IS HEREBY ORDERED that:

3 Respondent's license is reactivated upon payment of the renewal fee. Respondent is
4 placed on Probation with the following terms and conditions:

5 **1. Structured Educational Intervention:**

6 Respondent shall return to active patient care in conformity with the Educational
7 Intervention recommended by the Facility in its April 7, 2021 Report including, but not
8 limited to a period of initial observation, use of an educational preceptor as well as
9 completion of CME and self-study directed at areas of educational need identified by the
10 Facility.

11 No later than 30 days from the date of this Order, Respondent shall submit the
12 name of an educational preceptor who is a physician, licensed, and in good standing with
13 experience in the area of family medicine for pre-approval by Board staff. The Educational
14 Preceptor shall be responsible for assisting with Respondent's educational development,
15 and shall set regular meetings to review cases and documentation, discuss decisions
16 related to those cases, review specific topics, and make plans for future learning, including
17 incorporation of CME regarding areas of need identified by the Facility. Respondent shall
18 provide Board staff with a signed statement from the Educational Preceptor that he or she
19 has reviewed the Facility's report and agrees to provide services in accordance with the
20 requirements of this Order.

21 No later than 30 days from the date of this Order, Respondent shall submit the
22 name of a practice preceptor who is a physician licensed and in good standing with the
23 Board for pre-approval by Board staff. The Practice Preceptor shall be responsible for
24 ensuring that Respondent is incorporating CME identified by the Facility or recommended
25 by the Educational Preceptor into his practice, and that Respondent's treatment and

1 examination skills are in accordance with current guidelines. Respondent shall agree to
2 allow the Practice Preceptor to view his interactions with any and all patients as deemed
3 appropriate by the Practice Preceptor. Respondent shall not engage in direct patient care
4 prior to the Board's approval of the Practice Preceptor, and Respondent has provided
5 Board staff with a signed statement from the Practice Preceptor that he or she has
6 reviewed the Facility's report and agrees to provide services in accordance with the
7 requirements of this Order.

8 Respondent shall cause the Educational and Practice Preceptors to provide
9 quarterly written reports to the Board or at any time the Preceptor(s) have concerns
10 regarding Respondent's safety to practice medicine.

11 Respondent may petition the Board in writing for termination of this requirement.
12 Respondent's request for termination must be accompanied by a report from the
13 Preceptors that Respondent has completed educational remediation in the areas identified
14 by the Facility's report, that his fund of knowledge regarding current treatment guidelines is
15 adequate and his physical examinations meet the standard of care. Additionally,
16 Respondent shall provide proof of completion of CME¹ for all areas of need identified by
17 the Facility in its report.

18 Respondent is responsible for all costs of compliance with this requirement,
19 including costs related to the quarterly reports and CME.

20 2. Respondent shall enroll and participate in the Board's PHP for a period of
21 five (5) years.

22 3. Respondent shall not consume alcohol or any food or other substance
23 containing poppy seeds or alcohol.

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¹ CME completed by Respondent must include a Board approved intensive, in-person course on clinician-patient communications.

1 4. Respondent shall not take any illegal drugs or mood altering medications
2 unless prescribed for a legitimate therapeutic purpose.

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

9 6. Respondent shall enter treatment with a PHP Contractor approved addiction
10 medicine specialist or addiction psychiatrist and shall comply with any and all treatment
11 recommendations, including taking any and all prescribed medications. Respondent shall
12 instruct the treating professional to submit quarterly written reports to the PHP regarding
13 diagnosis, prognosis, current medications, recommendation for continuing care and
14 treatment, and ability to safely practice medicine. The reports shall be submitted quarterly
15 to the PHP, the commencement of which to be determined by the PHP Contractor.
16 Respondent shall provide the professional with a copy of this Order. Respondent shall
17 pay the expenses for treatment and be responsible for paying for the preparation of the
18 quarterly reports. At the expiration of one year or anytime thereafter, Respondent may
19 submit a written request to the PHP Contractor requesting termination of the requirement
20 that Respondent remain in treatment with a professional. The decision to terminate will be
21 based in part upon the treating professional's recommendation for continued care and
22 treatment.

23 7. Respondent shall promptly obtain a Primary Care Physician ("PCP") and
24 shall submit the name of the physician to the PHP Contractor in writing for approval.
25 Except in an Emergency, Respondent shall obtain medical care and treatment only from

1 the PCP and from health care providers to whom the PCP refers Respondent. Respondent
2 shall promptly provide a copy of this Order to the PCP. Respondent shall also inform all
3 other health care providers who provide medical care or treatment that Respondent is
4 participating in the PHP. "Emergency" means a serious accident or sudden illness that, if
5 not treated immediately, may result in a long-term medical problem or loss of life.

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

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

19 10. Respondent shall submit to random biological fluid, hair and/or nail testing
20 for the remainder of this Order (as specifically directed below) to ensure compliance with
21 the PHP.

22 11. Respondent shall provide the PHP Contractor in writing with one telephone
23 number that shall be used to contact Respondent on a 24 hour per day/seven day per
24 week basis to submit to biological fluid, hair, and/or nail testing to ensure compliance with
25 the PHP. For the purposes of this section, telephonic notice shall be deemed given at the

1 time a message to appear is left at the contact telephone number provided by
2 Respondent. Respondent authorizes any person or organization conducting tests on the
3 collected samples to provide testing results to the PHP Contractor. Respondent shall
4 comply with all requirements for biological fluid, hair, and/or nail collection. Respondent
5 shall pay for all costs for the testing.

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

8 13. If requested, Respondent shall successfully complete a PHP approved 36
9 hour alcohol/drug awareness education class.

10 14. Respondent shall immediately notify the Board and the PHP Contractor in
11 writing of any change in office or home addresses and telephone numbers.

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

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

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

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1 18. Respondent shall appear in person before with the PHP Contractor for
2 interviews upon request, upon reasonable notice.

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

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

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

20 22. In the event of a violation of A.R.S. § 32-1401(27)(f) by Respondent or
21 Respondent's use of drugs or alcohol in violation of the Order, Respondent's license shall
22 be **summarily suspended pending a hearing for revocation**. In the alternative,
23 Respondent may **SURRENDER THE LICENSE** if Respondent agrees in writing to being
24 impaired by alcohol or drug abuse. A.R.S. § 32-1452(G).

1 23. Respondent shall obey all state, federal and local laws, all rules governing
2 the practice of medicine in Arizona, and remain in full compliance with any court ordered
3 criminal probation, payments and other orders.

4 24. Prior to the termination of Probation, Respondent must submit a written
5 request to the Board for release from the terms of this Order. Respondent's request for
6 release will be placed on the next pending Board agenda, provided a complete submission
7 is received by Board staff no less than 30 days prior to the Board meeting. Respondent's
8 request for release must provide the Board with evidence establishing that he has
9 successfully satisfied all of the terms and conditions of this Order. The Board has the sole
10 discretion to determine whether all of the terms and conditions of this Order have been
11 met or whether to take any other action that is consistent with its statutory and regulatory
12 authority.

13 25. This Order supersedes any and all Consent Agreements previously entered
14 into by Respondent and the Board regarding this matter.

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

17 DATED AND EFFECTIVE this 14th day of September, 2021.

18 ARIZONA MEDICAL BOARD

19 By Patricia E. McSorley

20 Patricia E. McSorley
21 Executive Director
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1 **CONSENT TO ENTRY OF ORDER**

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

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

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

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

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

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

1 state agency or officer or political subdivisions of the State relating to this matter or other
2 matters concerning Respondent.

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

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

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

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

16 11. Any violation of this Order constitutes unprofessional conduct and may result
17 in disciplinary action. A.R.S. § § 32-1401(27)(s) ("Violating a formal order, probation,
18 consent agreement or stipulation issued or entered into by the board or its executive
19 director under this chapter") and 32-1451.

20 **11. Respondent has read and understands the conditions of probation.**

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23 JAY V. SWANSON, M.D.
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DATED: 09/03/21

1 EXECUTED COPY of the foregoing mailed
this 14th day of September, 2021 to:

2
3 Jay V. Swanson, M.D.
Address of Record

4 PHP Contractor
5 Address of Record

6 ORIGINAL of the foregoing filed
7 this 14th day of September, 2021 with:

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

10 Michelle Probus
11 Board staff

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