

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **DANIEL A. CAPEN, M.D**

4 Holder of License No. 46914  
5 For the Practice of Medicine  
6 In the State of Arizona.

**Case No. MD-17-0676A**

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

7 Daniel A. Capen, 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") as well as the facts stated herein; and  
10 consents to 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 46914 for the practice of  
15 allopathic medicine in the State of Arizona.

16 3. The Board initiated case number MD-17-0676A after receiving notification  
17 regarding a federal criminal complaints filed against Respondent and other individuals.

18 4. On June 28, 2018, Respondent entered into a plea agreement wherein he  
19 pled guilty to 2 counts; Conspiracy and Soliciting and Receiving Illegal Remunerations for  
20 Health Care Referrals and agreed to forfeit \$5,000,000.

21 5. On November 22, 2019, Respondent pled guilty to the felony charges of  
22 counts 1-18 of Conspiracy and counts 2-42 for Soliciting and Receiving Illegal  
23 Remunerations for Health Care Referrals and was sentenced to 30 months confinement,  
24 in addition to restitution and other fees.

25 6. Respondent states that he has retired from the practice of medicine and  
requests surrender of his license.

1  
2 **CONCLUSIONS OF LAW**

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

5 2. The conduct and circumstances described above constitute unprofessional  
6 conduct pursuant to A.R.S. § 32-1401(27)(a) ("Violating any federal or state laws or rules  
7 and regulations applicable to the practice of medicine."). Specifically, Respondent's  
8 conduct violated 18 U.S.C. § 371, Conspiracy to commit offense or to defraud United  
9 States and 18 U.S.C. § 1320a-7b(b)(1)(A), Soliciting and Receiving Illegal Remunerations  
10 for Health Care Referrals.

11 3. The conduct and circumstances described above constitute unprofessional  
12 conduct pursuant to A.R.S. § 32-1401(27)(d) ("Committing a felony, whether or not  
13 involving moral turpitude, or a misdemeanor involving moral turpitude. In either case,  
14 conviction by any court of competent jurisdiction or a plea of no contest is conclusive  
15 evidence of the commission.").

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

19 5. The conduct and circumstances described above constitute unprofessional  
20 conduct pursuant to A.R.S. § 32-1401(27)(w) ("Obtaining a fee by fraud, deceit or  
21 misrepresentation.").

22 6. The conduct and circumstances described above constitute unprofessional  
23 conduct pursuant to A.R.S. § 32-1401(27)(gg) ("Knowingly failing to disclose to a patient  
24 on a form that is prescribed by the board and that is dated and signed by the patient or  
25 guardian acknowledging that the patient or guardian has read and understands that the

1 doctor has a direct financial interest in a separate diagnostic or treatment agency or in  
2 nonroutine goods or services that the patient is being prescribed if the prescribed  
3 treatment, goods or services are available on a competitive basis. This subdivision does  
4 not apply to a referral by one doctor of medicine to another doctor of medicine within a  
5 group of doctors of medicine practicing together.”).

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

9 **ORDER**

10 IT IS HEREBY ORDERED THAT Respondent immediately surrender License  
11 Number 46914, issued to Daniel A. Capen, M.D., for the practice of allopathic medicine in  
12 the State of Arizona, and return his certificate of licensure to the Board.

13 DATED and effective this 4<sup>th</sup> day of December, 2020.

14  
15 ARIZONA MEDICAL BOARD

16 By: Patricia E. McSorley  
17 Patricia E. McSorley  
18 Executive Director

19 **CONSENT TO ENTRY OF ORDER**

20 1. Respondent has read and understands this Consent Agreement and the  
21 stipulated Findings of Fact, Conclusions of Law and Order (“Order”). Respondent  
22 acknowledges he has the right to consult with legal counsel regarding this matter.

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

25 3. By consenting to this Order, Respondent voluntarily relinquishes any rights  
to a hearing or judicial review in state or federal court on the matters alleged, or to

1 challenge this Order in its entirety as issued by the Board, and waives any other cause of  
2 action related thereto or arising from said Order.

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

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

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

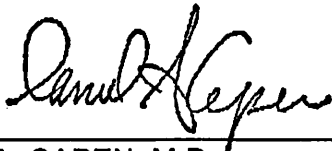
20 7. Upon signing this agreement, and returning this document (or a copy  
21 thereof) to the Board's Executive Director, Respondent may not revoke the consent to the  
22 entry of the Order. Respondent may not make any modifications to the document. Any  
23 modifications to this original document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

25

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

4           9.     If the Board does not adopt this Order, Respondent will not assert as a  
5 defense that the Board's consideration of the Order constitutes bias, prejudice,  
6 prejudgment or other similar defense.

7           10.    *Respondent has read and understands the terms of this agreement.*

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9 

Dated: NOV. 2, 2020

10 DANIEL A. CAPEN, M.D.

11  
12 EXECUTED COPY of the foregoing mailed by  
US Mail this 4<sup>th</sup> day of December 2020 to:

13 Daniel A. Capen, M.D.  
14 Address of Record

15 ORIGINAL of the foregoing filed this  
16 4<sup>th</sup> day of December, 2020 with:

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

19   
20 Board staff