BEFORE THE REVIEW COMMITTEE OF THE ARIZONA MEDICAL BOARD

In the Matter of **JAMES H. EVANS, M.D.** Holder of License No. 28668 For the Practice of Allopathic Medicine In the State of Arizona.	Case No. MD-18-0599A **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR LETTER OF REPRIMAND AND PROBATION WITH PRACTICE RESTRICTION**

The Review Committee of the Arizona Medical Board ("Board") considered this matter at its public meeting on October 8, 2020. James H. Evans, M.D. ("Respondent"), appeared before the Review Committee for a Formal Interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(P). The Review Committee voted to issue Findings of Fact, Conclusions of Law and Order for Letter of Reprimand and Probation with Practice Restriction after due consideration of the facts and law applicable to this matter.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 28668 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-18-0599A after receiving a complaint alleging that Respondent had written two prescriptions for controlled substances from a Medical Center prescription pad for a patient who had not been seen by the Medical Center. The complaint further alleged that a different patient of Respondent had presented to the pharmacy with a controlled substance prescription issued from a different Hospital System's prescription pad, and that the Hospital System reported that Respondent was not on the medical staff with the Hospital System.

4. From December, 2012 through March 10, 2020, Respondent was employed as an independent contractor by a Family Medical Center in Phoenix. Respondent's primary responsibility with the Family Medical Center was to supervise mid-level providers. Respondent did not see patients at the Family Medical Center. Additionally, during the time period relevant to the Board's investigation, Respondent was self-employed with a Medical Consultants practice, and he held privileges at a Hospital and with a Hospital System that allowed him to treat patients as a private hospitalist. Respondent was issued paper prescription pads for all of these practice locations.

Patients MB, AL, SS, CR and JF

5. Patient MB, a 44 year-old female whose primary residence was in Kingman, was issued a prescription by Respondent for alprazolam 1 mg #30 on July 12, 2016 on a Family Medical Center prescription pad. Respondent wrote MB a prescription for oxycodone/acetaminophen 10-325 #20 on March 13, 2017 using his Medical Consultants practice.

6. Respondent's first documented visit with MB occurred in her Sun City home on August 31, 2017. Respondent documented that he reviewed MB's CSPMP and wrote MB a prescription for Oxycodone, 30 mg, three times a day from a Hospital System prescription pad. Respondent continued to prescribe MB Oxycodone through May 19, 2018 utilizing prescription pads from the Hospital System, Family Medical Center, his Medical Consultants practice and another Hospital where Respondent held privileges as a hospitalist. On May 19, 2018, Respondent referred MB to a pain management specialist.

7. During the course of the Board's investigation, the Medical Center's Emergency Department Director verified that MB had not been seen at the Medical Center in conjunction with the prescription issued by Respondent. During the course of the Board's investigation, Respondent confirmed that MB was a private patient.

8. Patient AL, a 22 year-old female with previous history of Suboxone treatment, was seen by Respondent on March 25, 2018 under Respondent's Medical Consultants practice for complaints including chronic neck pain. Respondent documented review of the CSPMP and issued AL a prescription for Oxycodone written on his Hospital System prescription pad. When AL presented Respondent's prescription to a pharmacy to be filled, the pharmacist contacted the Hospital System to verify Respondent's prescription. The Hospital System verified that AL had not been seen within the Hospital System in conjunction with the prescription issued by Respondent, and the pharmacy declined to fill the prescription. At the time Respondent issued AL's prescription, she was receiving Xanax from another provider. AL had not been seen at the Hospital since August, 2017.

9. Patient SS established care with Respondent on June 14, 2017 with a primary complaint of chronic abdominal pain. Respondent documented prescribing SS oxycodone, Xanax and promethazine. SS presented and filled duplicate prescriptions dated June 15, 2017 for all three medications (Oxycodone 30 mg #180, promethazine with codeine syrup, and Xanax 2mg #60) on Respondent's Family Medical Clinic and Medical Consultants practice prescription pads to different pharmacies.

10. SS presented and filled a prescription for Oxycodone 15 mg #90 written on a Family Medical Clinic's prescription pad and Xanax 1 mg #60 on Medical Consultants practice prescription pad, both dated for June 16, 2017. On June 29, 2017 SS presented and filled a prescription for Xanax 1 mg #60 written on Hospital prescription pad.

11. On or about October 9, 2017 Respondent saw SS subsequent to a motor vehicle accident. Respondent prescribed SS Oxycodone and Xanax. Respondent continued to treat SS through March 28, 2019 through his Medical Consultants practice

with medications including Oxycodone, alprazolam, clonazepam, and tramadol using multiple prescription pads.

12. On or about October 18, 2018, SS pled guilty to an offense committed on or about August 28, 2017. According to SS's plea agreement and allocution, she admitted to possession of marijuana and methamphetamine, and pled guilty to Possession of Dangerous Drugs, a Class 4 felony. It was noted that on August 4, 2017 SS was arrested for possession of marijuana during a traffic stop by a different jurisdiction. SS admitted to being in possession of and utilizing marijuana for cancer pain, and daily use of marijuana during the time period preceding her arrest. The probation department report accompanying SS's plea agreement noted that she had at least seven prior felony convictions and two misdemeanor drug convictions.

13. Patient CR was a 69 year-old female patient that established care with Physician Assistants (PA-C RR and PA-C AG) at the Family Medical Clinic for treatment on December 13, 2017. Respondent documented review of all office visits for CR's treatment. PA-C RR and PA-C AG's treatment included ongoing refills for Morphine oxycodone and Xanax for complaints of chronic pain and anxiety until May 30, 2018 when PA-C AG documented the need to reduce CR's morphine milligram equivalents ("MME") to 50 and discontinue CR's benzodiazepine.

14. Patient JF established care with Respondent's Medical Consultants practice on January 2, 2018 with complaints of back pain and muscle spasm, and cough. JF had history of normal lumbar MRI. Respondent prescribed JF Percocet, Phenergan with codeine and Xanax, and had JF sign a controlled substance agreement

15. Respondent saw JF again via "tele visit" on November 9, 2018 for ongoing complaints of lower back discomfort. Respondent documented that JF requested imaging from his pain management doctor who refused and discussed referral for physical therapy.

Respondent ordered a urine dip stick and prescribed JF Percocet, Phenergan with codeine and Xanax.

16. On November 16, 2018, Respondent saw JF via "tele visit" who reported pain at an 8 out of 10 and requested a dose escalation. Respondent documented a discussion of possible addiction and abuse and referral to pain management. Respondent prescribed JF Percocet, Phenergan with codeine and Xanax, and documented that JF would need a UDS prior to any further treatment to rule out diversion. On December 7, 2018 Respondent documented a discussion with JF and his wife who reported a self-referral to pain management.

17. During the course of the Board's investigation, Respondent disclosed prior personal relationships to MB, AL and SS. In his narrative response to the Board, Respondent averred that he was unaware that all three patients were actively utilizing illicit substances while under his care.

18. In his medical record and in his narrative response to the Board, Respondent reported checking Controlled Substance Prescription Monitoring Program ("CSPMP") reports on his first visits with MB and AL. CSPMP records do not indicate a query for these initial visits for these patients. On AL's initial visit, Respondent prescribed AL oxycodone, an opioid medication. Respondent queried the CSPMP for Patient SS on October 10, 2017 and March 13, 2018. Respondent regularly prescribed opioids and benzodiazepines during the interim time period. In his initial narrative to the Board, Respondent asserted that he checked the CSPMP at every visit with MB. Records from the Arizona Board of Pharmacy show that Respondent did not check the CSPMP at every visit as stated.

Deviations from the Standard of Care

19. The standard of care requires the proper use of prescription writing materials and documentation of the prescriptions written that reflects the location where medical

services were rendered. Respondent deviated from the standard of care for Patients MB, AL and SS by the improper use of a prescription pad that did not provide the correct location where medical services were rendered.

20. The standard of care prohibits a physician from prescribing oxycodone for long term use without an appropriate diagnosis. Respondent deviated from this standard of care by prescribing oxycodone for long term use without an appropriate diagnosis for patient MB.

21. The standard of care prohibits a physician from prescribing a combination of opioids and benzodiazepines without a clinical rationale. Respondent deviated from this standard of care by prescribing a combination of opioids and benzodiazepines to patients AL, SS, CR, and JF without a clinical rationale.

22. The standard of care prohibits a physician from prescribing opioids to a patient with a documented history of substance abuse and drug seeking behavior. Respondent deviated from this standard of care by prescribing opioids to AL, a patient with a documented history of substance abuse and drug seeking behavior.

23. The standard of care requires a physician to perform a musculoskeletal examination and obtain radiographic studies prior to formulating a diagnosis and plan of treatment. Respondent deviated from this standard of care by not obtaining radiographic studies for AL prior to formulating a diagnosis and plan of treatment.

24. The standard of care prohibits a physician from prescribing opioids and benzodiazepines for long term use without a clinical rationale. Respondent deviated from this standard of care by prescribing opioids and benzodiazepines for long term use for patients SS, CR, and JF without a clinical rationale.

25. The standard of care requires a physician to recognize the presence of opioid use disorder and refer the patient as needed for treatment. Respondent deviated

from this standard of care by failing to recognize the presence of opioid use disorder in patients SS, CR, and JF, and by failing to refer the patients as needed for treatment.

26. The standard of care requires a physician to appropriately evaluate and treat a patient's chronic pain and anxiety. Respondent deviated from this standard of care in his treatment of patients CR and JF by failing to appropriately evaluate and treat the patients' chronic pain and anxiety.

27. Actual patient harm was identified in that MB appeared to have a dependency on oxycodone due to chronic usage and CR developed opioid use disorder.

28. There was the potential for patient harm in that MB was at an increased risk of chronic addiction with delay in providing evaluation and treatment by a pain specialist; AL was exposed to an increased risk of narcotic addiction based on the use of oxycodone and Xanax in a 21 year-old patient, a combination of which increased the risk of adverse side effects such as addiction, CNS, depression and psychomotor depression; Respondent and the providers he was supervising prescribed for patients SS and CR a combination of opioids and benzodiazepines that may have resulted in opioid withdrawal symptoms; and, Respondent may have perpetuated JF's opioid dependency and drug seeking behavior by not aggressively intervening for the treatment of opioid addiction that was needed.

Other Facts

29. During the course of the Board's investigation, Respondent acknowledged issuing prescriptions on various prescription pads for patients that were not seen in conjunction with the setting indicated on the prescription pad. Additionally, Board staff determined that Respondent issued prescriptions to patients that were missing information such as patient address, a practice phone number or that accurately reflected the location of service as his private practice. Board staff determined that Respondent utilized Hospital

System and Medical Center prescription pads for private care patients from June 29, 2017 through May 28, 2018. Additionally, Respondent utilized a prescription pad from his Medical Consultant's practice with an outdated address.

30. On March 11, 2020, Respondent entered into an Interim Consent Agreement for Practice Restriction prohibiting him from prescribing controlled substances, and from acting as a Supervising Physician.

31. During a Formal Interview on this matter, Respondent testified regarding his care and treatment of the patients at issue in this case. Respondent stated that he understood that there is a risk of addiction with the medications prescribed to these patients, but believed at the time he initiated treatment that the risk was somewhat low. Respondent stated that he requested urine drug screens, but was not persistent with obtaining the results. Respondent testified that he saw these patients in their homes because they all had difficulty with transportation to his office. With regard to the duplicate prescriptions issued to SS, Respondent testified that he believed his prescription pads had been compromised. Respondent stated that he was attempting to assist friends, and agreed that his treatment deviated from the standard of care. Respondent further testified that he was not currently practicing medicine in the State of Arizona.

32. During that same Formal Interview, Review Committee members expressed concerns regarding the manner in which Respondent prescribed medications to these patients. Committee members agreed that continuing the current controlled substance prescribing restriction would protect the public, pending completion of appropriate continuing medical education ("CME"). Additionally, Committee members agreed that if Respondent returned to prescribing controlled substances, he should undergo a period of chart monitoring.

CONCLUSIONS OF LAW

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

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(a) ("Violating any federal or state laws or rules and regulations applicable to the practice of medicine."). Specifically, Respondent violated C.F.R. § 21-1306.05(a) ("All prescriptions for controlled substance shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use, and the name, address and registration number of the practitioner."), and A.R.S. § 36-2606(F) (Beginning the later of October 1, 2017 or sixty days after the statewide health information exchange has integrated the controlled substances prescription monitoring program data into the exchange, a medical practitioner, before prescribing an opioid analgesic or benzodiazepine controlled substance listed in schedule II, III, or IV for a patient, shall obtain a patient utilization report regarding the patient for the preceding twelve months from the controlled substances prescription monitoring program's central database tracking system at the beginning of each new course of treatment and at least quarterly while that prescription remains a part of the treatment. Each medical practitioner regulatory board shall notify the medical practitioners licensed by that board of the applicable date. A medical practitioner may be granted a one-year waiver from the requirement in this subsection due to technological limitations that are not reasonably within the control of the practitioner or other exceptional circumstances demonstrated by the practitioner, pursuant to a process established in rule by the Arizona state board of pharmacy.").

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

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

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

6. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(jj)("Exhibiting a lack of or inappropriate direction, collaboration or direct supervision of a medical assistant or a licensed, certified or registered health care provider employed by, supervised by or assigned to the physician.").

7. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(kk)("Knowingly making a false or misleading statement to the board or on a form required by the board or in a written correspondence, including attachments, with the board.").

8. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(tt)("Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or has previously established a doctor-patient relationship. The physical or mental health status examination may be conducted during a real-time telemedicine encounter with audio and

video capability, unless the examination is for the purpose of obtaining a written certification from the physician for the purposes of title 36, chapter 28.1.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand.
2. Respondent is placed on Probation for a period of ten (10) years with the following terms and conditions:

a. Practice Restriction

Respondent's practice is restricted in that he is prohibited from engaging in solo practice, acting as a supervising physician pursuant to A.R.S. § 32-2501(16), or prescribing controlled substances in the State of Arizona for a minimum of five (5) years. The Practice Restriction shall not terminate except upon affirmative request of Respondent and approval by the Executive Director. Respondent's request for termination of this Practice Restriction must include satisfactory proof that he has completed the Continuing Medical Education ("CME") as stated in paragraph 2(b) of this Order, and has entered into an agreement with a Board-approved monitor to conduct chart reviews as stated in paragraph 2(c) of this Order.

Respondent may request modification of this Practice Restriction to allow him to prescribe controlled substances while employed in a hospital setting during the pendency of this Practice Restriction. Respondent shall not prescribe discharge medications. Respondent's request for modification must include satisfactory proof that he has completed the ethics and controlled substance prescribing CME required in paragraph 2(b) of this Order.

b. Continuing Medical Education

Respondent shall within 12 months of the effective date of this Order obtain no less than 15 hours of Board Staff pre-approved Category I CME in an intensive, in-person course regarding ethics, and no less than 10 hours of Board Staff pre-approved Category I CME in an intensive, in-person course regarding medical recordkeeping. Respondent shall within **thirty days** of the effective date of this Order submit his request for CME to the Board for pre-approval. Upon completion of the CME, Respondent shall provide Board staff with satisfactory proof of attendance. The CME hours shall be in addition to the hours required for the biennial renewal of medical licensure.

No less than six months prior to requesting termination of the Practice Restriction, Respondent shall obtain a minimum of 15 hours of Board Staff pre-approved Category I CME I an intensive, in-person course regarding controlled substance prescribing. Upon completion of the CME, Respondent shall provide Board staff with satisfactory proof of attendance. The CME hours shall be in addition to the hours required for the biennial renewal of medical licensure.

c. Chart Reviews

Prior to requesting termination of the Practice Restriction, Respondent shall enter into a contract with a Board approved monitoring company to perform periodic chart reviews at Respondent's expense. The chart reviews shall involve current patients' charts for care rendered after termination of the Practice Restriction. Based upon the chart review, the Board retains jurisdiction to take additional disciplinary or remedial action.

d. Obey All Laws

Respondent shall obey all state, federal and local laws, and all rules governing the performance of healthcare tasks in Arizona.

e. Tolling

In the event Respondent should leave Arizona to reside or practice outside the State or for any reason should Respondent stop practicing medicine in Arizona, Respondent shall notify the Executive Director in writing within ten days of departure and return or the dates of non-practice within Arizona. Non-practice is defined as any period of time exceeding thirty days during which Respondent is not engaging in the practice of medicine. Periods of temporary or permanent residence or practice outside Arizona or of non-practice within Arizona, will not apply to the reduction of the probationary period.

f. Probation Termination

After three consecutive favorable chart reviews, Respondent may petition the Board to terminate the Probation. Respondent may not request early termination without satisfaction of the chart review requirements as stated in this Order.

Prior to any Board consideration for termination of Probation, Respondent must submit a written request to the Board for release from the terms of this Order. Respondent's request for release will be placed on the next pending Board agenda, provided a complete submission is received by Board staff no less than 30 days prior to the Board meeting. Respondent's request for release must provide the Board with evidence establishing that he has successfully satisfied all of the terms and conditions of this Order.

The Probation shall not terminate except upon affirmative request of Respondent and approval by the Board. In the event that Respondent requests Probation termination and the Practice Restriction is in effect at the time of the request, the Board may require any combination of examinations and/or evaluations in order to determine whether or not Respondent is safe to prescribe controlled substances and the Board may continue the Practice Restriction or take any other action consistent with its authority.

The Board has the sole discretion to determine whether all of the terms and conditions of this Order have been met or whether to take any other action that is consistent with its statutory and regulatory authority.

3. The Board retains jurisdiction and may initiate new action against Respondent based upon any violation of this Order. A.R.S. § 32-2501(18)(ee).

RIGHT TO PETITION FOR REHEARING OR REVIEW

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

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

DATED AND EFFECTIVE this 3rd day of December, 2020.

ARIZONA MEDICAL BOARD

By Patricia E. McSorley
Patricia E. McSorley
Executive Director

EXECUTED COPY of the foregoing mailed this 3rd day of December, 2020 to:

James H. Evans, M.D.
Address of Record

ORIGINAL of the foregoing filed this 3rd day of December 2020 with:

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

Michelle Robles
Board staff