

1 **BEFORE THE REVIEW COMMITTEE OF THE ARIZONA MEDICAL BOARD**

2 In the Matter of

Case No. MD-19-1018A

3 **PAUL A. AUPPERLE, M.D.**

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR LICENSE
REACTIVATION, DECREE OF
CENSURE AND PROBATION**

4 Holder of License No. 30485
5 For the Practice of Allopathic Medicine
In the State of Arizona.

6 The Review Committee of the Arizona Medical Board ("Board") considered this
7 matter at its public meeting on April 5, 2023. Paul A. Aupperle, M.D. ("Respondent"),
8 appeared with legal counsel, Paul Giancola, Esq., before the Review Committee for a
9 Formal Interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(P).
10 The Review Committee voted to issue Findings of Fact, Conclusions of Law and Order
11 after due consideration of the facts and law applicable to this matter.

12 **FINDINGS OF FACT**

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

15 2. Respondent is the holder of license number 30485 for the practice of
16 allopathic medicine in the State of Arizona.

17 3. The Board initiated case number MD-19-1018A after receiving Respondent's
18 request for license reactivation.

19 4. Respondent participated in the Board's Physician Health Program ("PHP")
20 from August 17, 2004 through August 19, 2009 pursuant to a Stipulated Rehabilitation
21 Agreement ("SRA"). Respondent successfully completed the terms and conditions of the
22 SRA and the SRA was terminated.

23 5. Case MD-19-0491A was initiated upon receipt of a complaint stating that
24 Respondent presented to work while impaired on May 20, 2019. The complaint further
25 stated that Respondent fell asleep at his desk and hit his head causing injury. Illegal drugs

1 and drug paraphernalia were subsequently found on Respondent's person and in his
2 office.

3 6. Effective May 24, 2019, the Executive Director accepted Respondent's
4 Request for Inactivation with Cause and Order Inactivating License with Cause, closing
5 MD-19-0491

6 7. On July 18, 2019, in Pinal County Superior Court case CR201901725/EDC,
7 Respondent was charged with three felony counts related to the May 20, 2019 incident.
8 Respondent failed to report the charges within 10 days. On October 23, 2019, the Court
9 accepted Respondent's plea of guilty to one count of possession of drug paraphernalia, a
10 Class 6 Felony.

11 8. Respondent entered into inpatient treatment at a Board approved facility and
12 was discharged with staff approval on October 24, 2019. Respondent subsequently
13 enrolled in private monitoring with one of the Board's PHP Monitors.

14 9. Based on his request for reactivation, Respondent underwent a post-
15 treatment PHP Assessment with a Board approved Assessor, on multiple dates between
16 December 20, 2019 and September 22, 2021. In her December 20, 2021, The Assessor
17 opined that Respondent was safe to return to the practice of medicine, provided he comply
18 with recommendations for aftercare and continued monitoring.

19 10. On June 2, June 26 and September 5, 2022, Respondent underwent a
20 competency evaluation with a Board approved evaluator ("Evaluator"). Based on the
21 evaluation results and findings, the Evaluator opined that Respondent's overall
22 performance was satisfactory and that he was safe to practice provided he comply with
23 recommendations for education, proctoring, monitoring and aftercare.

24 11. During the Formal Interview, Respondent testified regarding his recovery
25 program. Respondent stated that his support network has improved and his insight has

1 also improved. Respondent also discussed his plans for avoiding situations where there
2 would be a risk of relapse. Respondent additionally discussed his return to work plans,
3 and stated that he intended to initially work part time, and in a group setting. Respondent
4 stated that was willing to comply with the recommendations for monitoring and aftercare
5 made by the Board's PHP and evaluators.

6 12. At the conclusion of the Formal Interview, Committee members agreed to
7 approve Respondent's request for license reactivation, with issuance of a decree of
8 censure and a requirement to participate in monitoring, aftercare and to comply with the
9 Evaluator's recommendations for education and proctoring.

10 **CONCLUSIONS OF LAW**

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

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

16 3. 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.").

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. Respondent's license is issued a Decree of Censure.

6 2. **Continuing Medical Education**

7 Respondent shall annually complete no less than 50 hours of Category I CME
8 in topics relevant to his scope of practice. Respondent shall submit quarterly reports to
9 Board staff regarding the CME completed towards this requirement, including course
10 descriptions and certificates of completion. Respondent shall maintain course related
11 materials and promptly provide them on request of Board staff. Board staff retains sole
12 discretion to approve Respondent's completed courses.

13 3. **Proctoring**

14 Prior to returning to the practice of medicine Respondent shall Respondent
15 shall submit the name of a Proctor who is a physician licensed and in good standing with
16 the Board for approval by Board staff. The Proctor shall concurrently over-read at least
17 25% of Respondents cases (or 80-100 per week) for a minimum of 30 days. After the
18 completion of the first 30 days, the Proctor shall provide a report to the Board regarding
19 Respondent's safety to practice medicine, diagnostic interpretation skills and clinical
20 judgment. The Proctor shall additionally opine whether Respondent is safe to practice
21 without oversight or whether additional proctoring is appropriate. In the event the Proctor
22 opines that additional proctoring is appropriate, Respondent shall continue to submit to
23 over-reads at a duration and frequency as recommended as the Proctor, with reports
24 every 30 days until the Proctor opines that Respondent is safe to practice without
25 oversight.

1 4. **Return to Work Recommendations**

2 Respondent shall comply with the return to work recommendations from the
3 Evaluator including participation in a Wellbeing Committee with his employer.

4 Respondent shall report on those activities as requested by the PHP, including
5 executing any releases necessary to allow the PHP to monitor his compliance with this
6 requirement and communicate directly with and obtain records from his employer(s) and
7 worksite monitor. Respondent shall be responsible for all costs of compliance with this
8 term, including the cost of complying with the reporting requirements.

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

11 6. Respondent shall not consume alcohol or any food or other substance
12 containing poppy seeds or alcohol.

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

15 8. Respondent shall continue to participate in any personalized aftercare
16 programs or activities as recommended by the Assessor in her post-treatment Assessment
17 Report including mutual support groups. Respondent shall report on those activities as
18 requested by the PHP, including executing any releases necessary to allow the PHP to
19 monitor his participation and communicate directly with and obtain records from the
20 treating providers for those aftercare activities. Respondent shall be responsible for all
21 costs of aftercare, including costs associated with compliance of this Board Order.

22 9. Respondent shall enter treatment with a PHP Contractor approved psychiatrist
23 as recommended by the PHP Assessor and shall comply with any and all treatment
24 recommendations, including taking any and all prescribed medications. Respondent shall
25 instruct the treating psychiatrist to submit quarterly written reports to the PHP regarding

1 diagnosis, prognosis, current medications, recommendation for continuing care and
2 treatment, and ability to safely practice medicine. The reports shall be submitted quarterly
3 to the PHP, the commencement of which to be determined by the PHP Contractor.
4 Respondent shall provide the psychiatrist with a copy of this Order. Respondent shall pay
5 the expenses for treatment and be responsible for paying for the preparation of the
6 quarterly reports.

7 10. Respondent shall promptly obtain a Primary Care Physician ("PCP") and shall
8 submit the name of the physician to the PHP Contractor in writing for approval. Except in
9 an Emergency, Respondent shall obtain medical care and treatment only from the PCP
10 and from health care providers to whom the PCP refers Respondent. Respondent shall
11 promptly provide a copy of this Order to the PCP. Respondent shall also inform all other
12 health care providers who provide medical care or treatment that Respondent is
13 participating in the PHP. "Emergency" means a serious accident or sudden illness that, if
14 not treated immediately, may result in a long-term medical problem or loss of life.

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

23 12. If recommended by the PHP Contractor, Respondent shall attend a relapse
24 prevention outpatient program for a duration and frequency recommended by the PHP
25 Contractor, unless Respondent is excused by the relapse program facilitator for good

1 cause. The relapse prevention group facilitators shall submit monthly reports to the PHP
2 regarding Respondent's attendance and progress.

3 13. Respondent shall participate in a 12-step recovery program or other self-help
4 program appropriate for substance abuse as recommended by the PHP. Respondent shall
5 attend a minimum of three 12-step or other self-help program meetings per week. Two
6 meetings per month must be Caduceus meetings. Respondent must maintain a log of all
7 self-help meetings.

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

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

20 16. Respondent shall provide the PHP Contractor with written notice of any plans
21 to travel out of state.

22 17. If requested by the PHP, Respondent shall successfully complete a PHP
23 approved 36 hour alcohol/drug awareness education class.

24 18. Respondent shall immediately notify the Board and the PHP Contractor in
25 writing of any change in office or home addresses and telephone numbers.

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

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

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

14 22. Respondent shall appear in person before with the PHP Contractor for
15 interviews upon request, upon reasonable notice.

16 23. Respondent shall immediately provide a copy of this Order to all employers,
17 hospitals and free standing surgery centers where Respondent currently has or in the
18 future gains or applies for employment or privileges. Within 30 days of the date of this
19 Order, Respondent shall provide the PHP with a signed statement of compliance with this
20 notification requirement. Respondent is further required to notify, in writing, all employers,
21 hospitals and free standing surgery centers where Respondent currently has or in the
22 future gains or applies for employment or privileges of a violation of this Order.

23 24. In the event Respondent resides or practices as a physician in a state other
24 than Arizona, Respondent shall participate in the rehabilitation program sponsored by that
25 state's medical licensing authority or medical society. Respondent shall cause the

1 monitoring state's program to provide written quarterly reports to the PHP Contractor
2 regarding Respondent's attendance, participation, and monitoring. The monitoring state's
3 program and Respondent shall immediately notify the PHP Contractor if Respondent is
4 non-compliant with any aspect of the monitoring requirements or is required to undergo
5 any additional treatment.

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

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

13 27. Respondent shall obey all state, federal and local laws, all rules governing the
14 practice of medicine in Arizona, and remain in full compliance with any court ordered
15 criminal probation, payments and other orders.

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

1 29. This Order supersedes any and all Consent Agreements previously entered
2 into by Respondent and the Board regarding this matter.

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

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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 20th day of June, 2023.

12 ARIZONA MEDICAL BOARD

13
14 By Patricia E. McSorley
15 Patricia E. McSorley
16 Executive Director
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1 EXECUTED COPY of the foregoing mailed
2 this 20th day of June, 2023 to:

3 Paul A. Aupperle, M.D.
4 Address of Record

5 Paul J. Giancola, Esq.
6 Snell & Wilmer, LLP
7 400 East Van Buren, Suite 1900
8 Phoenix, Arizona 85004-2202
9 Attorney for Respondent

10 ORIGINAL of the foregoing filed
11 this 20th day of June, 2023 with:

12 Arizona Medical Board
13 1740 West Adams, Suite 4000
14 Phoenix, Arizona 85007

15 Michelle Prober
16 Board staff
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