

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **COLE J. MCEWEN, M.D.**

4 Holder of License No. 55831
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-22-0052A

**INTERIM CONSENT AGREEMENT
FOR PRACTICE RESTRICTION**

7 **INTERIM CONSENT AGREEMENT**

8 Cole J. McEwen, M.D. ("Respondent") elects to permanently waive any right to a
9 hearing and appeal with respect to this Interim Consent Agreement for Practice Restriction
10 and consents to the entry of this Order by the Arizona Medical Board ("Board").

11 **INTERIM 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. 55831 for the practice of allopathic
15 medicine in the State of Arizona.

16 3. The Board initiated case number MD-22-0052A after receiving notification
17 from the Board's Physician Health Program ("PHP") Contractor that Respondent tested
18 positive for an illicit substance in violation of his confidential agreement for monitoring.

19 4. Effective September 21, 2021, Respondent entered into a Stipulated
20 Rehabilitation Agreement ("SRA") requiring Respondent to comply with terms and
21 conditions of monitoring arising out of case MD-21-0687A.

22 5. The SRA states in relevant part:

23 In the event of chemical dependency relapse by Respondent or Respondent's
24 use of drugs or alcohol in violation of this SRA, Respondent shall promptly
25 enter into an Interim Order for Practice Restriction and Consent to the Same
that requires, among other things, that Respondent not practice medicine until
such time as Respondent successfully completes long-term inpatient

1 treatment for chemical dependency designated by the PHP and obtains
2 affirmative approval from the Executive Director, in consultation with the chief
3 medical consultant and the lead Board member, to return to the practice of
4 medicine. Prior to approving Respondent's request to return to the practice of
5 medicine, Respondent may be required to submit to witnessed biological fluid
6 collection or undergo any combination of physical examination, psychiatric or
7 psychological evaluation. In no respect shall the terms of this paragraph
8 restrict the Board's authority to initiate and take disciplinary action for violation
9 of this SRA.

6 6. The aforementioned information was presented to the investigative staff, the
7 medical consultant and the lead Board member. All reviewed the information and concur
8 that the interim consent agreement to restrict Respondent's practice is appropriate.

9 7. The investigation into this matter is pending and will be forwarded to the
10 Board promptly upon completion for review and action.

11 **INTERIM CONCLUSIONS OF LAW**

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

14 2. Pursuant to A.R.S. § 32-1405(C)(25) the Executive Director has authority to
15 enter into a consent agreement when there is evidence of danger to the public health and
16 safety.

17 3. Pursuant to A.A.C. R4-16-504, the Executive Director may enter into an
18 interim consent agreement when there is evidence that a restriction is needed to mitigate
19 imminent danger to the public's health and safety. Investigative staff, the Board's medical
20 consultant and the lead Board member have reviewed the case and concur that an interim
21 consent agreement is appropriate.

22 **INTERIM ORDER**

23 IT IS HEREBY ORDERED THAT:

24 1. Respondent is prohibited from engaging in the practice of medicine in the
25 State of Arizona as set forth in A.R.S. § 32-1401(22) until Respondent applies to the

1 Executive Director and receives permission to do so.

2 2. Respondent may request, in writing, release and/or modification of this
3 Interim Consent Agreement. Respondent's request must be accompanied by information
4 demonstrating that Respondent is safe to practice medicine. The Executive Director, in
5 consultation with and agreement of the lead Board member and the Chief Medical
6 Consultant, has the discretion to determine whether it is appropriate to release
7 Respondent from this Interim Consent Agreement.

8 3. The Board retains jurisdiction and may initiate new action based upon any
9 violation of this Interim Consent Agreement, including, but not limited to, summarily
10 suspending Respondent's license.

11 4. Because this is an Interim Consent Agreement and not a final decision by
12 the Board regarding the pending investigation, it is subject to further consideration by the
13 Board. Once the investigation is complete, it will be promptly provided to the Board for its
14 review and appropriate action.

15 5. This Interim Consent Agreement shall be effective on the date signed by the
16 Board's Executive Director.

17
18 DATED this 26th day of January, 2022.

19 ARIZONA MEDICAL BOARD

20 By Patricia E. McSorley
21 Patricia E. McSorley
22 Executive Director
23
24
25

RECITALS

1 Respondent understands and agrees that:

2
3 1. The Board, through its Executive Director, may adopt this Interim Consent
4 Agreement, or any part thereof, pursuant to A.R.S. § 32-1405(C)(25) and A.A.C. R4-16-
5 504.

6 2. Respondent has read and understands this Interim Consent Agreement as
7 set forth herein, and has had the opportunity to discuss this Interim Consent Agreement
8 with an attorney or has waived the opportunity to discuss this Interim Consent Agreement
9 with an attorney. Respondent voluntarily enters into this Interim Consent Agreement and
10 by doing so agrees to abide by all of its terms and conditions.

11 3. By entering into this Interim Consent Agreement, Respondent freely and
12 voluntarily relinquishes all rights to an administrative hearing on the matters set forth
13 herein, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or
14 any other administrative and/or judicial action, concerning the matters related to the
15 Interim Consent Agreement.
16

17 4. Respondent understands that this Interim Consent Agreement does not
18 constitute a dismissal or resolution of this matter or any matters that may be currently
19 pending before the Board and does not constitute any waiver, express or implied, of the
20 Board's statutory authority or jurisdiction regarding this or any other pending or future
21 investigations, actions, or proceedings. Respondent also understands that acceptance of
22 this Interim Consent Agreement does not preclude any other agency, subdivision, or
23 officer of this State from instituting civil or criminal proceedings with respect to the conduct
24 that is the subject of this Interim Consent Agreement. Respondent further does not
25

1 relinquish Respondent's rights to an administrative hearing, rehearing, review,
2 reconsideration, judicial review or any other administrative and/or judicial action,
3 concerning the matters related to a final disposition of this matter, unless Respondent
4 affirmatively does so as part of the final resolution of this matter.

5 5. Respondent acknowledges and agrees that upon signing this Interim
6 Consent Agreement and returning it to the Board's Executive Director, Respondent may
7 not revoke Respondent's acceptance of this Interim Consent Agreement or make any
8 modifications to it. Any modification of this original document is ineffective and void unless
9 mutually approved by the parties in writing.

10 6. Respondent understands that this Interim Consent Agreement shall not
11 become effective unless and until it is signed by the Board's Executive Director.

12 7. Respondent understands and agrees that if the Board's Executive Director
13 does not adopt this Interim Consent Agreement, Respondent will not assert in any future
14 proceedings that the Board's consideration of this Interim Consent Agreement constitutes
15 bias, prejudice, prejudgment, or other similar defense.

16 8. Respondent understands that this Interim Consent Agreement is a public
17 record that may be publicly disseminated as a formal action of the Board, and that it shall
18 be reported as required by law to the National Practitioner Data Bank.

19 9. Respondent understands that this Interim Consent Agreement does not
20 alleviate Respondent's responsibility to comply with the applicable license-renewal
21 statutes and rules. If this Interim Consent Agreement remains in effect at the time
22 Respondent's allopathic medical license comes up for renewal, Respondent must renew
23 the license if Respondent wishes to retain the license. If Respondent elects not to renew
24 the license if Respondent wishes to retain the license. If Respondent elects not to renew
25

1 || the license as prescribed by statute and rule. Respondent's license will not expire
 2 ||
 3 || nor, by operation of law (A.R.S. § 32-3202), become suspended until the Board takes
 4 || final action in this matter. Once the Board takes final action, in order for Respondent to be
 5 || licensed in the future, Respondent must submit a new application for licensure and meet
 6 || all of the requirements set forth in the statutes and rules at that time.

7 || 10. Respondent understands that any violation of this Interim Consent
 8 || Agreement constitutes unprofessional conduct under A.R.S. § 32-1401(27)(s) ("Violating
 9 || a formal order, probation, consent agreement or stipulation issued or entered into by the
 10 || board or its executive director under this chapter."),

11 || 
 12 || _____
 13 || COLE J. MCEWEN, M.D.

14 || DATED: 1/26/22

15 || EXECUTED COPY of the foregoing e-mailed
 16 || this 26th day of January, 2022 to:

17 || Cole J. McEwen, M.D.
 18 || Address of Record

19 || ORIGINAL of the foregoing filed
 20 || this 26th day of January, 2022 with:

21 || Arizona Medical Board
 22 || 1740 West Adams, Suite 4000
 23 || Phoenix, Arizona 85007

24 || 
 25 || _____
 26 || Board staff