

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **CHARLES E. KELLY, M.D.**

4 Holder of License No. 42668
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-20-0379A, MD-20-0897A

**INTERIM CONSENT AGREEMENT
FOR PRACTICE RESTRICTION**

7 **INTERIM CONSENT AGREEMENT**

8 Charles E. Kelly, 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. 42668 for the practice of allopathic
15 medicine in the State of Arizona.

16 3. The Board initiated case number MD-20-0379A after receiving a complaint
17 regarding Respondent's care and treatment of a 63 year-old female patient ("Patient 1")
18 alleging inappropriate performance of an examination.

19 4. During the course of the Board's investigation, Board staff was also notified
20 regarding concerns involving Respondent's care and treatment of a 59 year-old female
21 patient ("Patient 2"), with allegations involving inappropriate contact during the course of
22 an examination.

23 5. The Board initiated case number MD-20-0897A after receiving a complaint
24 from a 47 year-old female patient ("Patient 3") alleging inappropriate conduct during the
25 course of a colonoscopy procedure.

1 **INTERIM ORDER**

2 IT IS HEREBY ORDERED THAT:

3 1. Respondent is prohibited from engaging in the practice of medicine in the
4 State of Arizona as set forth in A.R.S. § 32-1401(22) except as stated herein:

5 **a. Treatment**

6 Respondent shall promptly enroll and participate in a Board-staff pre-approved
7 intensive outpatient treatment program ("IOP") as recommended by the Facility, and
8 comply with all recommendations of the IOP, including any recommendations for ongoing
9 treatment, monitoring, and therapy. Respondent shall authorize the IOP to communicate
10 directly with Board staff regarding Respondent's treatment, any post-treatment
11 recommendations, and any concerns regarding Respondent's safety to practice medicine.
12 Respondent shall provide a copy of this Interim Practice Restriction to the IOP, as well as
13 any and all reports from the Facility. If requested by the IOP, Respondent shall authorize
14 the IOP to obtain records from and communicate directly with the Facility regarding his
15 evaluation. Respondent shall authorize the IOP to provide quarterly written reports to the
16 Board as well as a final discharge report regarding Respondent's treatment and prognosis,
17 and any additional treatment, continuing medical education or practice recommendations.
18 Additionally, prior to discharge from the IOP, Respondent shall prepare and implement an
19 IOP approved Boundary Protection Plan and provide it promptly to Board staff for review
20 and approval. Once approved by Board staff, Respondent shall promptly provide a copy
21 of the Boundary Protection Plan to the Chaperone and Practice Monitor. Respondent is
22 responsible for the expenses of treatment and for any and all reports from the IOP to the
23 Board.

24 **b. Chaperone**

25 Respondent shall have a Board staff pre-approved female chaperone present while

1 examining or treating all female patients in all settings, including but not limited to office,
2 hospital, and clinic. Within 30 days from the date of this Order, Respondent shall obtain a
3 female chaperone who is an Arizona licensed healthcare provider (i.e. registered nurse,
4 licensed practical nurse or physician assistant) employed by the Respondent, hospital or
5 clinic and may not be a representative or relative who accompanied the patient, nor may
6 she be a member of the Respondent's immediate family as defined by A.R.S. § 32-
7 1401(13). From the effective date of this Order until the date a chaperone is obtained who
8 meets these requirements, Respondent shall have his two currently employed medical
9 assistants present during all examinations of female patients.

10 Respondent shall instruct any female chaperone to document her presence for
11 each female patient seen by Respondent by contemporaneously maintaining a Board-staff
12 preapproved log, and by electronically signing each chart. Respondent shall instruct the
13 female chaperone to immediately report any inappropriate behavior to the Practice Monitor
14 and the Board. The chaperone shall provide the Practice Monitor with a copy of the patient
15 log on a weekly basis, and to Board staff upon request.

16 **c. Chart Reviews**

17 Board staff or its agents shall conduct periodic chart reviews to monitor
18 Respondent's compliance with this Interim Practice Restriction.

19 **d. Practice Monitor**

20 Respondent shall within 10 days of the date of this Order obtain a Board-staff pre-
21 approved Practice Monitor as recommended by the Facility. Respondent shall provide a
22 copy of this Interim Practice Restriction and the Facility's recommendations to the Practice
23 Monitor, and provide the Board with a statement signed by the Practice Monitor indicating
24 that the Practice Monitor has read this Interim Practice Restriction and agrees to provide
25 services in accordance with its requirements.

1 The Practice Monitor shall be responsible for ensuring that Respondent's treatment
2 is in accordance with current guidelines and that Respondent is providing appropriate
3 examinations. The Practice Monitor shall also serve as the primary point of contact for the
4 Chaperone regarding any questions or concerns about the monitoring process or
5 Respondent's safety to practice medicine. Respondent shall agree to allow the Practice
6 Monitor to view his interactions with any and all patients as deemed appropriate by the
7 monitor. The Practice Monitor shall provide written reports to the Board on a monthly
8 basis or at any time the Practice Monitor has concerns regarding Respondent's safety to
9 practice. Respondent shall be responsible for all expenses relating to the practice monitor
10 and preparation of the monthly reports.

11 e. **Polygraph**

12 If requested by Board staff, Respondent shall complete a polygraph with a Board
13 staff pre-approved provider as recommended by the Facility. Respondent shall provide
14 the polygrapher with a copy of this Interim Consent Agreement and the recommendations
15 from the Facility, and any other records requested by the polygrapher for the performance
16 of the polygraph. Respondent shall execute any and all consents necessary to authorize
17 the polygrapher to communicate directly to the Board and/or the Facility if requested by
18 the polygrapher. Respondent is responsible for all expenses relating to the polygraph and
19 any written reports provided by the polygrapher.

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

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

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

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

10
11 DATED this 12th day of February, 2021.

12 ARIZONA MEDICAL BOARD

13 By Patricia E. McSorley
14 Patricia E. McSorley
15 Executive Director

16 **RECITALS**

17 Respondent understands and agrees that:

18 1. The Board, through its Executive Director, may adopt this Interim Consent
19 Agreement, or any part thereof, pursuant to A.R.S. § 32-1405(C)(25) and A.A.C. R4-16-
20 504.

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

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

8 4. Respondent understands that this Interim Consent Agreement does not
9 constitute a dismissal or resolution of this matter or any matters that may be currently
10 pending before the Board and does not constitute any waiver, express or implied, of the
11 Board's statutory authority or jurisdiction regarding this or any other pending or future
12 investigations, actions, or proceedings. Respondent also understands that acceptance of
13 this Interim Consent Agreement does not preclude any other agency, subdivision, or
14 officer of this State from instituting civil or criminal proceedings with respect to the conduct
15 that is the subject of this Interim Consent Agreement. Respondent further does not
16 relinquish Respondent's rights to an administrative hearing, rehearing, review,
17 reconsideration, judicial review or any other administrative and/or judicial action,
18 concerning the matters related to a final disposition of this matter, unless Respondent
19 affirmatively does so as part of the final resolution of this matter.
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21 5. Respondent acknowledges and agrees that upon signing this Interim
22 Consent Agreement and returning it to the Board's Executive Director, Respondent may
23 not revoke Respondent's acceptance of this Interim Consent Agreement or make any
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1 modifications to it. Any modification of this original document is ineffective and void unless
2 mutually approved by the parties in writing.

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

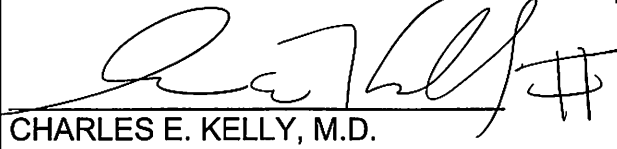
5 7. Respondent understands and agrees that if the Board's Executive Director
6 does not adopt this Interim Consent Agreement, Respondent will not assert in any future
7 proceedings that the Board's consideration of this Interim Consent Agreement constitutes
8 bias, prejudice, prejudgment, or other similar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

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

12 9. Respondent understands that this Interim Consent Agreement does not
13 alleviate Respondent's responsibility to comply with the applicable license-renewal
14 statutes and rules. If this Interim Consent Agreement remains in effect at the time
15 Respondent's allopathic medical license comes up for renewal, Respondent must renew
16 the license if Respondent wishes to retain the license. If Respondent elects not to renew
17 the license as prescribed by statute and rule, Respondent's license will not expire but
18 rather, by operation of law (A.R.S. § 32-3202), become suspended until the Board takes
19 final action in this matter. Once the Board takes final action, in order for Respondent to be
20 licensed in the future, Respondent must submit a new application for licensure and meet
21 all of the requirements set forth in the statutes and rules at that time.
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23 10. Respondent understands that any violation of this Interim Consent
24 Agreement constitutes unprofessional conduct under A.R.S. § 32-1401(27)(s) ("[v]iolating
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1 a formal order, probation, consent agreement or stipulation issued or entered into by the
2 board or its executive director under this chapter.”).

3 
4 CHARLES E. KELLY, M.D.

DATED: 2-12-21

5
6 EXECUTED COPY of the foregoing e-mailed
7 this 12th day of February, 2021 to:

8 Michael K. Goldberg, Esq.
9 Goldberg Law Group, LLC
10 16427 North Scottsdale Road, Suite 200
11 Scottsdale, Arizona 85254
12 Attorney for Respondent

13 ORIGINAL of the foregoing filed
14 this 12th day of February 2021 with:

15 Arizona Medical Board
16 1740 West Adams, Suite 4000
17 Phoenix, Arizona 85007

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19 Board staff
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