

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

Case No. MD-19-0200A

3 **GRAYSON H. WHEATLEY, M.D.**

**ORDER FOR DECREE OF CENSURE
AND CIVIL PENALTY; AND CONSENT
TO THE SAME**

4 Holder of License No. 33217
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

7 Grayson H. Wheatley, M.D. ("Respondent") elects to permanently waive any right to
8 a hearing and appeal with respect to this Order for Decree of Censure and Civil Penalty;
9 admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of
10 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 33217 for the practice of
15 allopathic medicine in the State of Arizona.

16 3. The Board initiated case number MD-19-0200A after receiving a complaint
17 alleging that Respondent was inappropriately providing telemedicine services to a 76 year-
18 old female patient ("JL").

19 4. On February 22, 2019, the Board received a complaint from PH, daughter
20 and medical power of attorney ("POA") for JL alleging that Respondent was inappropriately
21 providing telemedicine services. Specifically, the complaint alleged that Respondent
22 provided orders for JL to receive durable medical equipment ("DME") without performing
23 an examination and based on a call from telemarketers. PH noted that the total cost of the
24 items Respondent ordered were billed to Medicare for \$4,747.26. PH confirmed that she
25 returned all DME equipment to the respective companies. PH also provided photos of JL
which demonstrate severe kyphosis and scoliosis.

1 5. On February 8, 2019, a Medicare Summary Notice for JL indicated that the
2 following claims for DME prescribed by Respondent were processed from November 10,
3 2018 to February 8, 2019:

- 4 a. From December 24, 2018 to December 26, 2018, Medicare denied claims
5 submitted by a Medical Equipment provider for a lumbar-sacral orthosis at a
6 cost of \$1,445 and a shoulder elbow wrist hand orthosis at a cost of \$797.
- 7 b. On December 26, 2018, a Medical Supply provider submitted a claim for
8 shoulder elbow wrist hand orthosis at a cost of \$1,044.24 that was approved.
9 Medicare paid the Medical Supply provider \$682.24, JL was billed \$174.04.
- 10 c. On December 26, 2018, the Medical Supply provider's claim for knee
11 orthosis (Right and Left) was approved by Medicare. The Medical Supply
12 company submitted the claim for \$1,019.98, of which Medicare paid \$666.38,
13 leaving JL to be billed for \$170. Additionally, the Medical Supply provider's
14 claim of \$143.92 for addition to lower extremity orthosis (Right and Left) was
15 approved. Of that claim, Medicare paid \$94.02, and JL was billed \$23.99.
- 16 d. On December 26, 2018, Medicare approved a third Medical Supply
17 Company's claim for lumbar-sacral orthosis. Medicare paid \$898.52 of the
18 Medical Supply Company's claim of \$1,375.30, and JL was billed \$229.22.
- 19 e. On December 28, 2018, Medicare denied a \$1,037.28 Medical Supply
20 Company claim for knee orthosis (left and right).
- 21 f. On December 28, 2018, Medicare approved a Medical Supply's claim for
22 addition to lower extremity orthosis (right side) was approved with the
23 supplier charging \$271.98 to which Medicare paid \$188.05, and JL was billed
24 \$47.97.
- 25

1 6. Respondent provided three detailed written orders for orthosis and a signed
2 statement of medical necessity as well as three SOAP notes written for JL dated
3 December 23, 2019. Respondent ordered a lumbar device, left and right knee braces, and
4 a right shoulder device for JL. Respondent identified diagnoses of low back pain and
5 generalized muscle weakness, unilateral primary osteoarthritis of both knees, chronic
6 instability of both knees, primary osteoarthritis right shoulder, strain of other muscles,
7 fascial and tendons at shoulder and upper arm, and right shoulder pain. The written
8 orders for orthosis stated that the patient had been provided with instructions. The SOAP
9 notes contained statements by Respondent indicating that he explained the benefits of the
10 equipment to JL and that she was alert and oriented as to person, place and time. The
11 written statement of necessity included an attestation signed by Respondent statement
12 that he personally performed the assessment of JL, and verified the medical necessity of
13 the devices ordered.

14 7. During the course of the Board's investigation, Respondent reported that he
15 entered into an independent contractor relationship with a Telemarketing Company.
16 Respondent disclosed that he would review information provided by the Telemarketing
17 Company, consisting of intake paperwork and an audio recording of a conversation
18 between the patient and Telemarketing Company staff. Based on this information,
19 Respondent would issue prescriptions for DME to patients, including JL. Respondent did
20 not speak with JL prior to prescribing her orthotics.

21 8. Respondent provided Board staff with a copy of his contract with the
22 Telemarketing Company, dated September 12, 2018 for a renewable term of one year.
23 The contract notes that Respondent is licensed in Arizona and 8 other states, and allowed
24 him to perform consultations in all states where he was licensed.

25

1 9. Respondent reported that he terminated his relationship with the
2 Telemarketing Company after PH contacted him to complain regarding the DME orders
3 issued by Respondent for JL.

4 10. On November 12-13, 2020 Respondent completed the Medical Ethics and
5 Professionalism course offered by PBI Education, a Board-approved provider, for a total of
6 22 Category I CME credit hours.

CONCLUSIONS OF LAW

8 a. The Board possesses jurisdiction over the subject matter hereof and over
9 Respondent.

10 b. The conduct and circumstances described above constitute unprofessional
11 conduct pursuant to A.R.S. § 32-1401(27)(e) (“Failing or refusing to maintain adequate
12 records on a patient.”).

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

17 d. The conduct and circumstances described above constitute unprofessional
18 conduct pursuant to A.R.S. § 32-1401(27)(v) (“Charging a fee for services not rendered or
19 dividing a professional fee for patient referrals among health care providers or health care
20 institutions or between these providers and institutions or a contractual arrangement that
21 has the same effect.”).

22 e. The conduct and circumstances described above constitute unprofessional
23 conduct pursuant to A.R.S. § 32-1401(27)(w) (“Obtaining a fee by fraud, deceit or
24 misrepresentation.”).

25

1 f. The conduct and circumstances described above constitute unprofessional
2 conduct pursuant to A.R.S. § 32-1401(27)(tt) ("Prescribing, dispensing or furnishing a
3 prescription medication or a prescription-only device as defined in section 32-1901 to a
4 person unless the licensee first conducts a physical examination of that person or has
5 previously established a doctor- real-time telemedicine encounter with audio and video
6 capability unless the examination is for the purpose of obtaining a written certification from
7 the physician for the purposes of title 36, chapter 28.1.").

8 **ORDER**

9 IT IS HEREBY ORDERED THAT:

- 10 1. Respondent is issued a Decree of Censure.
- 11 2. Respondent is assessed a \$5000.00 Civil Penalty. The Civil Penalty shall be
12 paid, by certified funds, within 90 days of the effective date of this Order.
- 13 3. The Board retains jurisdiction and may initiate new action against
14 Respondent based upon any violation of this Order. A.R.S. § 32-1401(27)(s)

15 DATED AND EFFECTIVE this 16th day of February 2021.

16
17 ARIZONA MEDICAL BOARD

18 By Patricia E. McSorley
19 Patricia E. McSorley
20 Executive Director

21 **CONSENT TO ENTRY OF ORDER**

22 1. Respondent has read and understands this Consent Agreement and the
23 stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Respondent
24 acknowledges he has the right to consult with legal counsel regarding this matter.
25

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

3 3. By consenting to this Order, Respondent voluntarily relinquishes any rights to
4 a hearing or judicial review in state or federal court on the matters alleged, or to challenge
5 this Order in its entirety as issued by the Board, and waives any other cause of action
6 related thereto or arising from said Order.

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

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

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

24 7. Upon signing this agreement, and returning this document (or a copy thereof)
25 to the Board's Executive Director, Respondent may not revoke the consent to the entry of

1 the Order. Respondent may not make any modifications to the document. Any
2 modifications to this original document are ineffective and void unless mutually approved
3 by the parties.

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

7 9. If any part of the Order is later declared void or otherwise unenforceable, the
8 remainder of the Order in its entirety shall remain in force and effect.

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

12 11. Any violation of this Order constitutes unprofessional conduct and may result
13 in disciplinary action. A.R.S. § § 32-1401(27)(s) ("[v]iolating a formal order, probation,
14 consent agreement or stipulation issued or entered into by the board or its executive
15 director under this chapter.") and 32-1451.

16 12. ***Respondent has read and understands the conditions of probation.***

17
18 
19 GRAYSON H. WHEATLEY, M.D.

DATED: 01/14/2021

1 EXECUTED COPY of the foregoing mailed
2 this 16th day of February 2021 to:

3 Steve Myers, Esq.
4 MITCHELL | STEIN | CAREY | CHAPMAN, PC
5 One Renaissance Square
6 2 North Central Avenue, Suite 1450
7 Phoenix, AZ 85004

8 ORIGINAL of the foregoing filed
9 this 16th day of February 2021 with:

10 Arizona Medical Board
11 1740 West Adams, Suite 4000
12 Phoenix, Arizona 85007

13 Michelle Rhodes
14 Board staff