BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **WILLIAM K. KVIEN, M.D.** License No. 15772 For the Practice of Allopathic Medicine In the State of Arizona.	Case No. MD-07-0193A **CONSENT AGREEMENT FOR LETTER OF REPRIMAND AND PROBATION**

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and William K. Kvien, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

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

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement of any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

5. This Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any

1 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any
2 other pending or future investigation, action or proceeding. The acceptance of this
3 Consent Agreement does not preclude any other agency, subdivision or officer of this
4 State from instituting other civil or criminal proceedings with respect to the conduct that is
5 the subject of this Consent Agreement.

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

12 7. Upon signing this agreement, and returning this document (or a copy thereof)
13 to the Board's Executive Director, Respondent may not revoke the acceptance of the
14 Consent Agreement. Respondent may not make any modifications to the document. Any
15 modifications to this original document are ineffective and void unless mutually approved
16 by the parties.

17 8. If the Board does not adopt this Consent Agreement, Respondent will not
18 assert as a defense that the Board's consideration of this Consent Agreement constitutes
19 bias, prejudice, prejudgment or other similar defense.

20 9. This Consent Agreement, once approved and signed, is a public record that
21 will be publicly disseminated as a formal action of the Board and will be reported to the
22 National Practitioner Data Bank and to the Arizona Medical Board's website.

23 10. If any part of the Consent Agreement is later declared void or otherwise
24 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force
25 and effect.

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

12. Respondent has read and understands the condition(s) of probation.

William Kvien MD DATED: 10-10-07

WILLIAM K. KVIEN, M.D.

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 15772 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-07-0193A after receiving a complaint against Respondent alleging unprofessional conduct with a patient ("GS"), substance abuse and falsification of medical records.

4. On March 30, 2007, during an investigational interview, Respondent admitted to Staff that he had a sexual relationship with GS while she was a patient. In response to Staff's questioning, Respondent admitted to having previous relationships with female patients. Respondent admitted to prescribing controlled substances to GS and that he did not document this in GS's medical record. In response to Staff's questioning regarding substance abuse, Respondent denied using marijuana and stated his last use was prior to 1990.

5. During the interview, Respondent admitted that he used his daughter's medical record number to obtain laboratory tests for his sister because his sister was uninsured.

6. On April 9, 2007, Respondent reported to Staff that he had not been truthful during the March 30, 2007 interview and he admitted to using marijuana approximately five months ago.

7. On April 10, 2007, Respondent was ordered to undergo an inpatient chemical dependency evaluation and a psychiatric/psycho-sexual evaluation. The evaluation concluded that Respondent should obtain chemical dependency treatment to address his abuse of alcohol and marijuana and that he participate in individual and group

psychotherapy to address his use of authority to establish unequal personal and sexual relationships with staff and patients.

8. Based on those recommendations Respondent was ordered to undergo residential treatment at Professional Renewal Center ("PRC"). Respondent was discharged from treatment on July 13, 2007 with a diagnosis of marijuana abuse and narcissistic, borderline, passive-aggressive, dependent, obsessive and compulsive traits. The discharge summary recommended numerous aftercare conditions, including a chaperone when examining female patients; individual random urine drug screens and ethics and boundary courses.

9. A physician is required to maintain adequate legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment. A.R.S. § 32-1401(2). Respondent's records were inadequate because he prescribed controlled substances without documenting it in the medical record. Respondent also falsified an order to obtain laboratory tests for his sister by using his daughter's medical record number on the referral/order.

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)(e) ("[f]ailing or refusing to maintain adequate records on a patient."); A.R.S. § 32-1401(27)(f) ("[h]abitual intemperance in the use of alcohol or habitual substance abuse."); A.R.S. § 32-1401(27)(t) ("[k]nowingly making any

false of 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."); A.R.S. § 32-1401 (27)(z) ("[e]ngaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with licensee, for purposes of this subdivision, "Sexual Conduct" includes: (i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual. (ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature. (iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.") and A.R.S. § 32-1401(27)(jj) ("[k]nowingly 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.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand for engaging in sexual relationships with patients; for habitual intemperance; for making a false statement to the Board; for making a false statement in connection with the practice of medicine and for failure to maintain adequate medical records.

2. Respondent shall not perform examinations or treat female patients, in all settings including, but not limited to, office, hospital and clinic unless a **female chaperone** is present and her view unencumbered. The female chaperone **must be a licensed allied healthcare provider** (i.e., physician assistant, registered nurse, licensed practical nurse) employed by the Respondent, hospital or clinic and may not be a representative or relative

who accompanied the patient. Respondent shall instruct the female chaperone to document her presence by signing, dating and legibly printing her name on each patient's chart at the time of the examination. Respondent shall instruct the female chaperone to immediately report any inappropriate behavior to Respondent and the Board. Board Staff may perform random periodic reviews to ensure compliance with this Order.

a. After completing a psychosexual evaluation by a Board approved evaluator, Respondent may submit a written request that the Board terminate the practice restriction requiring the presence of a female chaperone.

b. The Board evaluator shall provide a written confidential testing report to Board Staff. The Board evaluator and the evaluator's report are prepared solely for the benefit of the Board. Therefore, the Board evaluator is not treating Respondent as a patient. Upon request, Respondent shall authorize the release to Board Staff or the Board evaluator all records relating to Respondent's previous medical, psychiatric or psychological history. Respondent shall contact Board Staff for the name of the Board-approved evaluator.

c. The Board's decision to terminate will be based, in part, upon the Board evaluator's recommendation for continued care and treatment.

3. Respondent is placed on probation for **five years** with the following terms and conditions:

a. Within **six to twelve months** of the date of this Order, Respondent shall return to PRC for a one week follow up evaluation. PRC shall provide a written

confidential evaluation report to Board Staff. The evaluation report is prepared solely for the benefit of the Board. Therefore, the evaluator is not treating Respondent as a patient.

b. Respondent shall **within one year** of the effective date of this Order obtain **10 hours** of Board Staff pre-approved Category I Continuing Medical Education ("CME") **in ethics** and **10 hours in boundary issues** and 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 license.

c. **Biological Fluid Collection.** Respondent shall undergo biological fluid collection (as more specifically directed by Board Staff) for **two years**. In addition, Respondent shall not consume alcohol or any food/substance containing poppy seeds and shall abstain from all mood altering substances. Respondent shall not take any medication unless prescribed by Respondent's primary care physician. Respondent shall not self-prescribe any medication.

1. During all times that Respondent is physically present in the State of Arizona and such other times as Board Staff may direct, Respondent shall promptly comply with requests from Board Staff or MAP Director to submit to witnessed biological fluid collection. If Respondent is directed to contact an automated telephone message system to determine when to provide a specimen, Respondent shall do so within the hours specified by Board Staff. For the purposes of this paragraph, in the case of an in-person request, "promptly comply" means "immediately." In the case of a telephonic request, "promptly comply" means that, except for good cause shown, Respondent shall appear and submit to specimen collection not later than two hours after telephonic notice to appear is given. The Board in its sole discretion shall determine good cause.

2. Respondent shall provide Board Staff in writing with one telephone number that shall be used to contact Respondent on a 24 hour per day/seven

day per week basis to submit to biological fluid collection. For the purposes of this section, telephonic notice shall be deemed given at the time a message to appear is left at the contact telephone number provided by Respondent. Respondent authorizes any person or organization conducting tests on the collected samples to provide testing results to the Board and the MAP Director.

3. Respondent shall cooperate with collection site personnel regarding biological fluid collection. Repeated complaints from collection site personnel regarding Respondent's lack of cooperation regarding collection may be grounds for termination from MAP.

4. **Out of State Travel and/or Unavailability at Home or Office Telephone Number.** Respondent shall provide Board Staff at least three business days advance written notice of any plans to be away from office or home when such absence would prohibit Respondent from responding to an order to provide a biological fluid specimen or from responding to communications from the Board. The notice shall state the reason for the intended absence from home or office, and shall provide a telephone number that may be used to contact Respondent.

5. **Payment for Services. Respondent shall pay for all costs, including personnel and contractor costs at time service is rendered, or within 30 days of each invoice sent to Respondent.**

6. **Respondent shall pay all costs for the biological fluid testing.**

d. Respondent shall immediately obtain a treating psychotherapist approved by Board Staff and shall remain in treatment with the psychotherapist for a minimum of **two years**. Respondent shall comply with the psychotherapist's recommendations for continuing care and treatment. Respondent shall instruct the

psychotherapist to submit quarterly written reports to the Board regarding diagnosis, prognosis, and recommendations for continuing care and treatment. The reports must be submitted on or before the 15th day of March, June, September and December of each year. Respondent shall provide the psychotherapist with a copy of this Order. Respondent shall pay the expenses of all the psychotherapy and is responsible for paying for the preparation of the quarterly reports.

1. After **two years** Respondent may submit a written request that the Board terminate the requirement that Respondent remain in treatment with a psychotherapist. The Board's decision to terminate will be based, in part, upon the treating psychotherapist's recommendation for continued care and treatment.

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

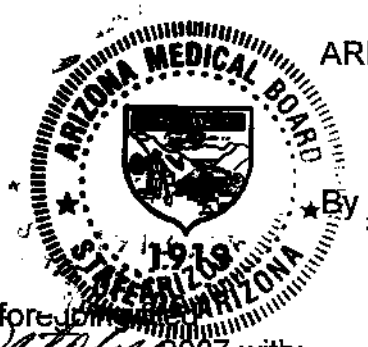
f. In the event Respondent should leave Arizona to reside or practice outside the State or for any reason should Respondent stop practicing medicine in Arizona, Respondent shall notify the Executive Director in writing within ten days of departure and return or the dates of non-practice within Arizona. 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.

g. The Board retains jurisdiction and may initiate new action based upon any violation of this Order.

4. This Order is the final disposition of case number MD-07-0193A.

DATED AND EFFECTIVE this 15th day of October, 2007.

(SEAL)



ARIZONA MEDICAL BOARD

By _____
TIMOTHY C. MILLER, J.D.
Executive Director

ORIGINAL of the foregoing mailed this 15th day of October, 2007 with:

Arizona Medical Board
9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

EXECUTED COPY of the foregoing mailed this 15th day of October, 2007 to:

John J. Shufeldt
Shufeldt Law Firm
2550 N. Thunderbird Circle, Suite 303
Mesa, AZ 85215-1215

EXECUTED COPY of the foregoing mailed this 15th day of October, 2007 to:

William K. Kvien, M.D.
Address of Record

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Investigational Review