BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of David I. Plumb, M.D. Holder of License No. 37523 For the Practice of Medicine In the State of Arizona	**Docket No. 07A-37523-MDX** **Case No. MD-07-0892A** **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR PRACTICE LIMITATION**

On February 7, 2008 this matter came before the Arizona Medical Board ("Board") for oral argument and consideration of the Administrative Law Judge ("ALJ") Diane Mihalsky's proposed Findings of Fact and Conclusions of Law and Recommended Order involving David I. Plumb, M.D. ("Respondent"). Respondent was notified of the Board's intent to consider this matter at the Board's public meeting. Respondent appeared with counsel, John Messing, Esq. The State was represented by Dean Brekke, Esq. Christopher Munns, Assistant Attorney General with the Solicitor General's Section of the Attorney General's Office provided independent legal advice to the Board.

The Board having considered the ALJ's recommended decision and the entire record in this matter hereby issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

THE SUMMARY SUSPENSION

1. Dr. Plumb was born in 1980. He obtained an undergraduate degree from the University of California at Davis in 2002 and received a medical degree from the University of Arizona School of Medicine in 2006. He has wanted to be a medical doctor since he was 15 years old. He started a residency in family medicine at the Mayo Clinic in Scottsdale in 2006. In August, 2007, Dr. Plumb was beginning the second year of his residency.

2. In late August 2007, during the beginning of the second year of his residency, Dr. Plumb suffered a crisis. He did not appear for urgent care clinic rotations required for his residency at the Mayo Clinic. He did not attend a recruiting dinner in Tucson to which he had previously committed. He did not contact anyone at the Mayo Clinic and stopped taking telephone calls, including from his mother and step-father in Tucson.

3. On August 29, 2007, Dr. Edwards, the program director for the urgent care clinic, and Dr. Tiffany Lunt, one of Dr. Plumb's colleagues in the Mayo Clinic residency program, whom he also considers a friend, met the police at Dr. Plumb's apartment. Dr. Plumb was in the apartment when they arrived, with music on. When Dr. Edwards knocked on the door, Dr. Plumb turned the music up. Finally, Dr. Edwards forced entry into the apartment.

4. When Dr. Edwards and Dr. Lunt entered his apartment, Dr. Plumb entered the closet and got dressed. Dr. Edwards and Dr. Lunt told Dr. Plumb that they were concerned about his well-being and wanted him to go to the Mayo Clinic to be evaluated and treated by a psychiatrist. Dr. Plumb agreed and he rode in Dr. Edwards' car to the Mayo Clinic.

5. On August 29, 2007, Mayo Clinic psychiatrist Kari Martin, M.D. evaluated Dr. Plumb.[1] Dr. Martin noted Dr. Plumb's disheveled appearance, "fixed stare during the interview and odd affect." Dr. Plumb told Dr. Martin the following:

- Dr. Plumb had been "quite distressed" about his career choice and, in February, had been consuming large amounts of alcohol and then driving, with the hope he would be arrested for DWI and unable to serve call the next day. He had been driving without fastening his seatbelt, hoping that he would be injured in an accident and unable to perform his duties as a physician.

- Dr. Plumb had been having an affair with a married woman, who was a resident in eastern Washington. Two weeks earlier she had ended the affair because her husband had found out about it. He felt he should be upset but was not.

[1] Dr. Martin's report of her evaluation was admitted as the Board's Exhibit B.

- Dr. Plumb also had been seeing a nursing student in Tucson. Because he wanted to "burn his bridges," he began sending her aggressive messages and, as a result, she had obtained a restraining order against him. He denied access to guns or plans of harming the nursing student, but acknowledged a history of a "violent temper." When he was writing the aggressive notes, "he felt as if a 'homunculus' inside him was telling him what to do."

- Dr. Plumb said that he had had his wisdom teeth extracted several days earlier and had been prescribed Lortab. He had consumed 14 tablets following the surgery, along with a quarter bottle of vodka "due to curiosity and indifferent to living." He was very surprised when he woke up the next day and concluded that he "can't be killed by conventional weapons." If he returned home, he would overdose again to try to test his limits.

- Dr. Plumb had been drinking excessively the past week, a bottle of wine per day. He acknowledged a history of "consuming large amounts of psychoactive substances in the past" and alluded to "cocaine and methamphetamine and opioid binges in college and high school," but denied any recent illegal drug use.

- Dr. Plumb reported "some intrusive sexual fantasies of a violent and non-violent nature."

6. Dr. Martin described Dr. Plumb as follows:

> His affect is flat and calm as he relates these events. There is no mood lability or tearfulness. There might be a slight sense of bemusement at the sensation this has caused around him. The patient himself does not understand the concern of those around him. His reality testing is significantly impacted. His judgment and insight are poor. Speech is nonpressured.

Based on Dr. Plumb's appearance, behavior, and statements, Dr. Martin gave him the Axis I diagnoses of "Psychosis NOS. History of cocaine, methamphetamine, and opoid use." On Axis V, she estimated his level of functioning at 30.

7. Because Dr. Martin felt that Dr. Plumb was at significant risk of self-harm and he was unwilling to pursue voluntary psychiatric hospitalization, Dr. Martin asked that a Crisis Prevention Recovery ("CPR") representative begin a petition for involuntary commitment to an inpatient care facility.

8. Dr. Plumb's mother, step-father, and sister drove up from Tucson to see him. Dr. Martin reported:

> This patient's family . . . arrived. We had a family meeting including Dr. Hovan and Beth Heinrich from Occupational Medicine. The family was very

> distressed at the patient's change in behavior. They had a family member who happens to be a neurologist contacts Dr. Caselli regarding appropriate neurologic care. They would like a neurologic evaluation and feel there is an organic etiology to the patient's symptoms. Dr. Hovan and I tried to explain that we have been urging [Dr. Plumb] to have a medical evaluation, but he has consistently declined it. The point of petitioning would be to assert that a medical evaluation did occur and that the patient was in a safe environment, unable to act on any self-harm gestures. Patient's stepfather who has a legal background requested to speak to David to see if he could pursue voluntary neurologic evaluation. In the event that that would occur would likely mean that the patient would be evaluated in the Emergency Room. We still might need to pursue the petitioning process through CPR for placement.
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> Spoke with Nancy Cummings in the legal department. The patient's family had apparently threatened some legal action towards Mayo for holding the patient against his will. Nancy is the attorney on record.
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> I spoke with the family candidly about the medical liability as well as [Dr. Plumb's] voicing of suicidal attempts and ideations as well as my fears that he would engage in self-harm if discharged. We also spoke about the risk of him being released voluntarily only to later dismiss medical or psychiatric care at the outside of the bounds where we would have he infrastructure to initiate appropriate care. Nancy Cummings is assisting with legal matters of the law.
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> ADDENDUM . . .: The patient denied all of his previous statements to the CPR representative. We, therefore, felt it a necessity to proceed with a petition for involuntary placement. The CPR representative assisted with the completion of the forms. We informed the patient of this decision as well as his family. The family was very distressed by the finding.
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> At 9:45 we learned that CPR had granted the petition for involuntary placement. No physician direct contact was deemed necessary. We will have police escort the patient as per protocol.

9. A sample of Dr. Plumb's blood was taken on August 29, 2007. The sample was later determined to be negative for PCP, THC, amphetamines, methamphetamines, barbituates, cocaine, opiates, and tricyclic.[2]

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[2] *See* Dr. Plumb's Ex. 5.

10. On August 30, 2007, Dr. Plumb was transported to Desert Vista Behavioral Health Center ("Desert Vista"), which is part of the Maricopa Integrated Health System for court-ordered evaluation. After admission to Desert Vista, Dr. Plumb was prescribed and began taking Geodon, an antipsychotic medication.

11. On September 6, 2007, while Dr. Plumb was in Desert Vista, the Board issued License No. 37523 for the practice of allopathic medicine in Arizona to him. Before that, he had been working at Mayo Clinic under a residency permit.

12. While Dr. Plumb was in Desert Vista, the Board received a communication from Mayo Clinic, which expressed concern about his ability to practice medicine safely. The Board opened an investigation.

13. On September 7, 2007, psychologist Nancy Van Der Veer, Psy.D. evaluated Dr. Plumb at Desert Vista.[3] Dr. Van Der Veer noted that Michael Brennan, MD, the Medical Director of Desert Vista, had requested the evaluation. Dr. Van Der Veer also noted Dr. Martin's report and Dr. Plumb's admission to Desert Vista, as follows:

> Upon admission to Desert Vista, Dr. Plumb presented with euthymic mood and appropriate affect. His thought processes were logical, but he expressed delusional thoughts. Current diagnoses include Psychotic Disorder Not Otherwise Specified; Mood Disorder Not Otherwise Specified; Rule Out Bipolar Disorder, Most Recent Episode Manic Severe With Psychotic Features; and Rule Out Personality Disorder Not Otherwise Specified.
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> **Review of Recent Behavior:** Progress Notes indicate and nursing staff report that Dr. Plumb has been pleasant and cooperative with staff and social with peers. At times they report that his affect is anxious and he is verbose with loose thoughts. Staff has observed him smiling and laughing to himself and he appeared to be responding to internal stimuli. On unit, he often appears guarded and preoccupied, and holds himself in a stiff posture.
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> **Behavioral Observations:** . . . Dr. Plumb is a 26-year-old, Caucasian man who appears his stated age. He presented as well groomed and dressed in his own clothes. He was very cooperative and polite, and appeared to put forth good effort on the tests. Dr. Plumb was wearing his own glasses

[3] *See* the Board's Ex. C.

> throughout the assessment. His hearing and vision appeared intact for the purpose of this assessment. He maintained good eye contact with this writer. He described his mood as "unhappy, more blah than depressed" and rated his level of depression at a 4 or 5 on a scale of 1 to 10, with 1 being no depression and 10 being the most depressed. His affect was mildly blunted, but appropriate to content. His attention, concentration, and memory were intact and without noticeable impairment. His speech rate, rhythm, and volume were within normal limits. His thought processes were goal oriented and logical. He explained his behaviors as being the result of an intentional exaggeration in order to obtain a leave from his program. There was no evidence of behaviors related to psychosis during the interview and assessment. Dr. Plumb appears to have some insight as evidenced by his report that he has been unhappy with his residency and stressed by the lack of sleep and increased responsibilities of the program. Furthermore, he reported that last year, a break-up with his girlfriend was very stressful. He has not developed close friendships during his residency program and misses the support of family and friends.

14. Dr. Van Der Veer administered the Minnesota Multiphasic Personality Inventory-2 ("MMPI-2) and the Rorschach Inkblot Test to Dr. Plumb.

15. According to Dr. Van Der Veer, the MMPI-2 showed no neurotic or psychotic symptoms, but indicated that Dr. Plumb was "immature and impulsive," "a risk-taker who may do things others do not approve of just for the personal enjoyment of doing so." He was likely to be viewed by others as rebellious and occasionally to show bad judgment. He was "likely to be suspicious of the actions of others, and may tend to blame them for his negative frame of mind."

16. According to Dr. Van Der Veer, the Rorschach Inkblot Test showed that Dr. Plumb appeared "more strongly committed than most people to being agreeable and establishing harmonious relationships when he does interact with others," but that he "may have a limited capacity to form close attachments to other people."

17. According to Dr. Van Der Veer, Dr. Plumb was "highly motivated to grasp complex concepts and to attempt ambitious undertakings." However, he tended to "take in more information than he [could] organize efficiently and to examine situations more thoroughly than serves any reasonable purpose." As a consequence, Dr. Plumb "may be hesitant in making

decisions, uncertain about whatever decisions he does make, and easily persuaded to defer and delay, rather than come to closure . . . ."

18. Dr. Van Der Veer concluded that Dr. Plumb was "most likely **not** currently experiencing a depressive, manic, or psychotic episode. Rather, the test results suggest that current situational stress and personality characteristics most likely account for his recent inappropriate and maladaptive behaviors. . . ." [Emphasis in original.]

19. On September 12, 2007, the Honorable Benjamin Vatz heard Mayo Clinic's petition that Dr. Plumb be ordered to submit to treatment. Dr. Plumb's step-father, Mr. Messing, is an attorney and represented him at the hearing. Commissioner Vatz dismissed the petition, explaining as follows:

> I think we can all agree that there was a period of time that Dr. Plumb went through a serious break. He was in crisis and the question is whether that was a result of a mental disorder or not.
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> If I make the finding that it was a mental disorder, I still have to make the finding that Dr. Plumb was willing or able to accept voluntary treatment.
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> And the evidence I have heard today is that, from Day one, he was a model patient. He's acknowledged that his barriers prior to hospitalization were due to an illness.
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> He's promised this Court that he will seek treatment. And while I, certainly, appreciate Dr. Martin's concerns for want to involuntary hospital Dr. Plumb, I think having had a chance to confer with family members and to make a family decision, that Dr. Plumb would have been ready to make.
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> That he was not given the true opportunity to accept voluntary treatment. Based upon that finding, it is ordered dismissing the petition.[4]

20. On September 12, 2007, Dr. Plumb was discharged from Desert Vista. He returned to his family's home in Tucson and began treatment under psychiatrist James Van Doren, M.D. Dr. Van Doren eventually diagnosed Dr. Plumb as follows:

> 309.29 Adjustment D/O with disturbance of mood and conduct
> R/O Brief Psychotic Disorder – Resolved

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[4] Dr. Plumb's Ex. 42.

R/O Bipolar D/O NOS
R/O Antisocial Personality[5]

21. After his release from Desert Vista, Dr. Plumb refrained from working or practicing medicine. On August 29, 2007, he began receiving short-term disability from Mayo Clinic.

22. On or about September 26, 2007, Dr. Plumb's attorney Mr. Messing suffered a debilitating back injury and was forced to complete bed rest. His personal physician prescribed muscle relaxants, which caused dizziness and confusion.

23. On or about September 27, 2007, the Board's Case Manager Kathleen Muller contacted Mr. Messing to schedule a Board interview of Dr. Plumb on October 1, 2007. Mr. Messing objected to the scheduled interview in light of his own inability to travel to Phoenix, due to his back injury, and Dr. Plumb's disability leave and stated intent to return to residency program only after being released by Dr. Van Doren. Ms. Muller still insisted that Dr. Plumb travel to Phoenix to be interviewed by Board staff.

24. On October 1, 2007, Dr. Plumb met with Board staff and objected to being interviewed outside the presence of his attorney Mr. Messing. After consulting with the Board's executive director, Ms. Muller agreed to delay the interview but ordered that Dr. Plumb provide bodily fluid and hair samples. Dr. Plumb complied.

25. On October 1, 2007, the Board also provided to Dr. Plumb an unsigned Interim Consent Agreement for Practice Limitation (Non-Disciplinary), under which any admission by Dr. Plumb would be solely for the disposition of the pending complaint. There was no proposed finding of unprofessional conduct against Dr. Plumb but only an admission that "his medical condition limits his ability to safely engage in the practice of medicine."[6] As a result of his condition, Dr. Plumb in the proposed agreement would "not practice clinical medicine or any medicine involving direct

[5] Dr. Plumb's Ex. 24 (Dr. Van Doren's 10/3/2007 treatment note, which apparently was the second time he treated Dr. Plumb).
[6] *See* Dr. Plumb's Ex. 1, Bates Number 000045.

patient care" and would not prescribe any medications until further order by the Board. Ms. Muller also sent a copy of the Consent Agreement to Mr. Messing by e-mail at approximately 3:00 p.m. on October 1, 2007.

26. Ms. Muller informed Dr. Plumb that he would have to accept the consent decree by 10:00 a.m. on the following day, October 2, 2007.

27. On October 1, 2006, the Board received the results of Dr. Plumb's bodily fluid analysis, which were negative for alcohol, amphetamines, cannabinoids, opiates, and cocaine metabolite.[7]

28. Ms. Muller also informed Dr. Plumb that he would have to submit to an interview by Board staff on October 3, 2007. Although Mr. Messing and Dr. Plumb again objected, because Mr. Messing had not recovered sufficiently to travel to Phoenix, Ms. Muller insisted that Dr. Plumb appear for an interview.

29. On October 2, 2007, Mr. Messing's back was treated by his chiropractor. Although Mr. Messing's condition was improved by the treatment, he was still restricted from travel. Mr. Messing's chiropractor felt he would be able to travel by October 8, 2007. Mr. Messing conveyed this information to Ms. Muller.

30. On October 3, 2007, Dr. Plumb appeared for his interview and again objected to being interviewed without his attorney. Nonetheless, the interview by Ms. Muller and Medical Consultant Kathleen Coffer, M.D. proceeded. Although no complete transcript of the interview was admitted into evidence, according to Ms. Muller's hearing testimony,[8] Dr. Plumb again denied the statements he had made to Dr. Martin at Mayo Clinic. He admitted to using methamphetamine 3 or

[7] *See* Dr. Plumb's Ex. 2.
[8] *See* Dr. Plumb's Ex. 8, which was page "1 of 24" and page "22 of 24," the last page, of the interview. The tape recording from which the transcript was prepared was not preserved.

4 years ago and becoming intoxicated at a wedding he had attended in May 2007. He informed Board staff that he had discontinued the Geodon, on the advice of Dr. Van Doren.[9]

31. Following the interview, the Board's executive director issued an interim Board order that required Dr. Plumb to submit to a psychiatric and substance abuse evaluation by psychiatrist Mark L. Rubin, M.D. on October 6, 2007, a Saturday.

32. On October 3 or 4, 2007, the Board received the results of the Hair 5 Drug Panel & Extended Opiates test of the hair sample that Dr. Plumb had provided on October 1, 2007, which was negative for amphetamines, cocaine/metabolites, opiates, extended opiates, phencyclidine, and THC metabolite.[10] The test results noted that it had been conducted on "Body hair (approximately 12 month time frame)."

33. On October 5, 2007, Mr. Messing on behalf of Dr. Plumb filed a 10-page Notice of Appeal under A.A.C. R4-16-510, challenging the Executive Director's insistence that Dr. Plumb be interviewed, despite his attorney's inability to attend the interview, and the fact that the Board had not sufficiently considered the effect of the oral surgery to remove four impacted wisdom teeth, which had "triggered an unusual behavior pattern," on Dr. Plumb's behavior on August 29, 2007.[11]

34. Mr. Messing requested that he be afforded an opportunity to address the Board at its next regularly scheduled meeting on October 10, 2007. Mr. Messing explained that he was obligated to appear before the Industrial Commission on October 11, 2007 for another client, which would prevent him from appearing before the Board on that date.

35. Ms. Muller acknowledged receipt of the appeal, informed Mr. Messing that no appeal would be permitted and that Dr. Plumb's failure to attend the appointment with Dr. Rubin would be considered by the Board to be unprofessional conduct.

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[9] *See* Dr. Plumb's Ex. 24 (Dr. Van Doren's treatment note of 10/3/2007, which noted "D/C Geodon. No apparent need for it. Will observe mood and TP/TC closely.").
[10] *See* Dr. Plumb's Ex. 3.
[11] *See* Dr. Plumb's Exhibit 1 at 000015 to 000023.

36. On October 6, 2007, Dr. Plumb appeared at Dr. Rubin's office with a $1,500 certified check to pay for the evaluation.

37. Dr. Rubin's report summarized some of the records he had reviewed and Dr. Plumb's explanation of those records as follows:

> Dr. Plumb appeared psychotic to multiple observers. He made delusional statements, referred to suicidal thoughts and attempts, acknowledged significant substance abuse mixed with narcotic medication prescribed for wisdom teeth pain with intent to die, and further acknowledged violent imagery, including threatening letters he had written to a former girlfriend. He was observed in the hospital in a psychotic state with inappropriate affect, laughing to himself, a fixed stare, and appearing dissociated from his surroundings. At the Medical Board meeting he continued to show impaired thinking and reasoning. He indicated that he made up the psychotic ideation, the suicidal ideation, and the alcohol abuse. He stated he made up the fact that he was either threatened with, or served with, a restraining order in regards to his former girlfriend. His explanation for making all of this up seemed to rely on the stresses he felt he was under at the time. These included wisdom teeth extraction, moderate-dose pain medication, psychosocial stressors from former relationships, and the stress of the residency. Regarding the latter, he had failed to show up for work on his rotation for a significant period of days prior to the psychiatric evaluation, which led to his hospital admission. He has little or no explanation of this, except that he was "thinking of quitting." He now believes his rights were violated and essentially nothing is wrong with him except the stresses he was under.[12]

38. Dr. Rubin summarized his examination of Dr. Plumb as follows:

> [Dr. Plumb] was clear that he thought the psychiatric evaluation by Dr. Martin was confidential. He asserted that he had made up and exaggerated information in order to explain his absence from the residency. He did not seem to understand that the explanation itself was illogical and clearly unsatisfactory for the purpose of demonstrating that he is safe to practice licensed medicine in Arizona.
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> He discussed with me that he had wanted to quit his residency and was disaffected with how medicine is practiced today. He stated he does not like to see many patients in a row in a "meat-grinder fashion" and wanted to have better relationships with patients. He stated that once he stopped showing up for his rotations, he was afraid to call in and admit that he was sick and he stated that once he began "going down the road" of lying about it, it was hard to back up and correct for him. He does not think he was

[12] The Board's Ex. 1.

psychotic and certainly does not believe he is actively or residually psychotic at the present time.

He brought a copy of a progress report by Dr. Van Doren from 10/3/07, and when we reviewed the content he did not disagree with it. Dr. Van Doren noted Dr. Plumb's "behavior and self-admitted pattern of playing mind games with others suggest a lack of empathy at times. Perhaps a schism in his personality." He did not agree with the assessment by Dr. Van Doren stating, "Rule out Brief Psychotic disorder – resolved, Rule out Bipolar disorder NOS, and Rule out Antisocial personality." Dr. Van Doren did write, "discontinue Geodon – no apparent need for it. Will observe mood and TP/TC (which I take to be thought processes/thought content) closely." Dr. Plumb did not disagree with the antisocial personality diagnosis and did state that he agreed with the comment of "perhaps a schism in his personality". This was explained further.

He stated that he wanted to be a physician since age 15, but he also wanted to be a writer, and I brought up several physicians who are writers. He thought their writing was inferior and referred to W. Somerset Maugham, a physician writer, as his ideal. He mentioned under his breath the name of a novel of human bondage, which he admired and thinks is one of the best books. Of interest, this is a story of a young, orphaned medical student in London who becomes sexually obsessed with an ambiguous male/female figure, which essentially ends his career. Dr. Plumb noted that he wrote his own novel in college, but found it "inferior and not worthy" and did not try to publish it.

I asked him about the delusional statement he had made to Dr. Martin, that there was a "homunculus" controlling him in his mind. I noted that homunculus is an anatomical term regarding the control of the motor strip of the brain, an imaginary "little man" representing body parts. He denied the connection and stated that he took it from another writer, Liebnitz, and stated that he liked to read a lot, and agreed that he liked making literary allusions and had done so during his prior psychiatric interviews. But he stayed with his story that he "made the whole thing up" and was now ready to go back and practice medicine.

He discussed briefly the estranged relationship with the former nursing student and did acknowledge that he may have made some inappropriate comments to her, though he would not reveal their nature. He stated he was not served with a restraining order, but with questioning, he acknowledged that she may have "threatened something like that", but would take it no further. He focused more on the relationship with a former married resident he had a year before, and his current guilty and feelings of responsibility in regards her recent phone calls, that she was getting a divorce, her husband knew about the affair, and he felt guilty about her children and wouldn't want to put them through "anything like that". I note that in his discussion of the resident's impending divorce, he seemed to narcissistically think the fault was all his and focused on the children whom he does not know. I asked if he had thought about these consequences when he had the affair with a married woman. He seemed uncomfortable with the question and had no

> answer. I asked intensively and repeatedly if he thought about the consequences of not showing up for work during his residency and compounding it with fabricated stories and what he now refers to as lies, including suicidal ideation, threats to others, significant substance abuse, and delusional psychotic statements. He could not discuss this, and maintained an estranged affect and constructed mannerism throughout the interview. I felt there may be tears held back at one point, but it was in regards to his future, not the current events nor the past.

39. With regards to "family psychiatric history," Dr. Rubin recounted that "Dr. Plumb's father died of alleged carbon monoxide poisoning in a garage, which is explained by a car he was working on falling on him and then his body hitting a garage door opener button with the car running, and subsequent death." Dr. Rubin considered the circumstances of Dr. Plumb's father's death to be suspicious and to indicate "a possible parental suicide." This possible familial history of suicide was especially troubling in light of Dr. Plumb's "documented suicidal statements and expressed intent to several evaluators before and during his hospitalization."

40. Dr. Rubin noted that Dr. Plumb had received some psychiatric treatment when he was nine years old, which Dr. Plumb explained was due to apparently accidental death of his father when he was five years old. Dr. Rubin noted that Dr. Plumb's "psychiatric treatment at age eight or nine for anger outbursts and acting out suggests childhood onset impulse control (or conduct disorder, which is a precursor to antisocial personality traits in adults) . . . ."

41. For the Objective Mental Status Appearance, Dr. Rubin noted that "Dr. Plumb came to the interview in jeans and a shirt worn outside his pants. He appeared disheveled for the circumstances. . . ."

42. Dr. Rubin also noted that there was evidence to suggest that Dr. Plumb had a substance abuse history. "Even past use of methamphetamine, cocaine, and marijuana suggest vulnerability to possible future or ongoing substance abuse problems, especially when under stress."

43. Dr. Rubin characterized Dr. Plumb's insight and judgment as "particularly troubled areas." Dr. Plumb appeared genuinely not to know why had failed to attend his rotation, without

informing anyone, and then told Dr. Martin fabrications, "which may have been accurate at the time but changed later when he became more aware of the consequences."

44. Dr. Rubin gave the following Axis I and Axis II diagnoses to Dr. Plumb:

AXIS I	298.9 Psychotic Disorder NOS – in partial resolution but with ongoing residual symptoms 304.80 Polysubstance Abuse History
AXIS II	301.83 Borderline Personality with Narcissistic and Anti-social Traits
AXIS V	45 Some impairment in reality testing or communication and impairment in several areas including work, judgment, thinking, and mood.

45. Based on these diagnoses and other evidence, Dr. Rubin rendered the following opinion on Dr. Plumb's current ability to practice allopathic medicine safely:

> This evaluation indicates that Dr. Plumb is not ready or able to independently work as a licensed physician at this time. He understands he should not prescribe medications for anyone including himself, and he should not treat patients or work as a licensed physician in any capacity at the present time. He is hopeful to be readmitted to his residency program in November but understands he must be released for work by his current treating psychiatrist, Dr. Van Doren, and he believes, an independent psychiatric evaluation as well. He understands he may be let go from the residency if these and possibly other conditions are not met. However, he does not have insight or understanding into the nature of his disorder or illness, he does not acknowledge significant substance abuse history or problems, though they are documented and appear to be present and he has no logical or rational explanation for the delusional, suicidal and illogical statements he made prior to his hospitalization and again during the hospitalization. It is common in a residual psychotic state to lack insight or understanding of what has happened and to even deny the known facts for awhile, often up to a year after the psychotic episode.
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> His explanation of exaggerating or embellishing his story to help stay out of work certainly do not make him fit for practice as a physician. His own statements would basically suggest that he may have had a substance-induced delirium caused by medication he was taking from pain secondary to wisdom teeth extraction, but this does not begin to fully explain his altered state of mind or presentation to several evaluators over an extended period of time both before and during the hospitalization. He likely had a brief psychotic episode in the context of a busy physician-practitioner schedule. It appears Dr. Plumb cannot independently practice medicine at this time. At a minimum, he needs to successfully complete the current residency or another one, stay in psychotherapy and let time pass to convince himself and others that he will not have a return of illness, any further substance

abuse, and no further episodes of threats of harm to himself or others. This would be minimally a year in my opinion, with ongoing treatment reports and substance abuse monitoring. Alternatively, he could perhaps resign his license to practice and reapply once he has successfully completed a residency program.

46. At approximately 3:00 p.m. on October 11, 2007, the Board faxed a second Consent Agreement, which was in all relevant respects identical to the agreement described at Finding of Fact No. 25. Along with the second Consent Agreement, he Executive Director of the Board issued an Interim Order for Residential Evaluation/ Treatment, which noted that the results of Dr. Rubin's evaluation suggested possible "substance abuse history and problems." The order required that Dr. Plumb "undergo and successfully complete a residential evaluation at a Board-approved facility," at his own expense.[13]

47. The Board's Executive Director required that Dr. Plumb accept the consent agreement by 4:00 p.m. on October 11, 2007, or the matter would be decided at an emergency Board meeting scheduled for 4:30 p.m. on October 11, 2007.

48. Between 3:00 p.m. and 4:30 p.m., Dr. Plumb was driving back from Phoenix. Mr. Messing was in a hearing before the Arizona Industrial Commission. Neither Mr. Messing nor Dr. Plumb was available to read the faxed Interim Order or Consent Agreement by the Board's deadline.

49. On October 11, 2007, the Board met and, after reviewing the matter and deliberating, issued an Interim Findings of Fact, Conclusions of Law, and Order for Summary Suspension of License against Dr. Plumb's License No. 37523. The Board concluded that "the public health, safety or welfare imperatively requires emergency action" under A.R.S. § 32-1451(D) and, therefore, summarily suspended Dr. Plumb's license, "pending a formal hearing before an

[13] *See* Dr. Plumb's Exhibit 1 at 000078 to 000079.

Administrative Law Judge from the Office of Administrative Hearings," which was to be commenced "as expeditiously as possible."

50. On October 15, 2007, Mr. Messing on behalf of Dr. Plumb filed a second notice of claim against the Board, to which was appended over 100 pages of Bates-stamped documents.

51. After the matter was referred to the Office of Administrative Hearings, Mr. Messing requested that the Notice of Claim be consolidated with the Summary Suspension. The Administrative Law Judge denied the motion because the legislature had not authorized her to hear common-law or civil claims.

52. A hearing was held on December 4 and 5, 2007. The Board had admitted into evidence three exhibits and presented Ms. Muller's and Dr. Rubin's testimony. Dr. Plumb testified on his own behalf, presented the testimony of his mother, Harriet Plumb Messing, and had admitted into evidence 41 exhibits, including the October 15, 2007 Notice of Claim and its attachments as Dr. Plumb's Ex. 1.

ADDITIONAL HEARING EVIDENCE

The August 22, 2007 Oral Surgery

53. On August 22, 2007, oral surgeon Robert F. Guyette, M.D., D.M.D. extracted all four of Dr. Plumb's wisdom teeth.[14] Dr. Guyette noted:

> This patient is a 26-year-old gentleman who presents for evaluation and removal of wisdom teeth. He has been on antibiotics (amoxicillin 500 mg t.i.d.) for the last seven days. He still has some soreness around the lower right wisdom tooth area.
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> . . . .
>
> EXAMINATION: HEAD AND NECK: Unremarkable. INTRAORAL EXAMINATION: Class I occlusion. Good hygiene. There is soft tissue pericoronitis in the 17 and 32 areas. Numbers 1 and 16 are also malpositioned.
>
> . . . .

[14] *See* Dr. Plumb's Ex. 36.

IMPRESSION: Four malpositioned and impacted third molar teeth with pericoronitis and localized infection.

RECOMMENDATIONS: Removal of four wisdom teeth under IV sedation and local anesthesia.

MEDICATIONS: He was given a prescription for Lortab 7.5 #20.

After the surgery, Dr. Guyette monitored Dr. Plumb for 40 minutes before discharging him.

Dr. Rubin's Testimony

54. Dr. Rubin is not employed by the Board but occasionally accepts referrals from the Board for evaluations, for which the evaluee pays.

55. Dr. Rubin obtained his undergraduate degree from Harvard in 1973 and obtained his medical degree from Columbia in 1977 and licensed shortly thereafter. Dr. Rubin was licensed in Arizona in 1989, but did not move to Arizona until 1995.

56. Dr. Rubin is board-certified in adult and child psychiatry. He is not a board-certified forensic psychiatrist.

57. Dr. Rubin characterized his evaluation of Dr. Plumb as a forensic evaluation, which means he must set aside any bias toward seeing the evaluee as a patient. He told Dr. Plumb that there was not any patient-psychiatrist relationship. Instead, by analogy, Dr. Rubin considered his patient to be the public safety. Dr. Rubin follows the American Association of Psychiatry's guidelines for forensic psychiatric evaluations.

58. Dr. Rubin testified that he reviewed the medical records from Mayo Clinic and Desert Vista. He asked Dr. Plumb open-ended questions about the areas of concern and then asked follow-up questions for clarification. Dr. Rubin's interview of Dr. Plumb lasted about 1½ hours, after which he started dictating his report.

59. Dr. Rubin testified that he knows Dr. Brennan is a first-rate psychiatrist. Dr. Brennan requested Dr. Van Der Veer's evaluation, which indicated concern about Dr. Plumb's status.

60. Dr. Rubin testified that the MMPI-2 test is mostly a "checklist." The Rorschach test is much less under the control of the evaluee. Dr. Rubin testified that Dr. Plumb's explanation that he had lied to Dr. Martin to get off his residency rotation raised concerns of malingering, which may be fraud.

61. Dr. Rubin testified that his evaluation of Dr. Plumb was primarily psychiatric and secondarily to explore possible substance abuse. Dr. Rubin testified that Dr. Plumb had worn boots, worn jeans, and a white shirt with the sleeves rolled up to the evaluation and had had "rumpled hair." He did not appear well.

62. Dr. Rubin expected more responses from Dr. Plumb, but he spent a good deal of time repeating what he had said in earlier interviews, as if by rote. Dr. Rubin was looking for motivational clues that would indicate that Dr. Plumb had been upset by the turn of events and that he was motivated to change, to open up and tell his side of the story. But Dr. Plumb only repeated what he had said to earlier interviewers.

63. Dr. Rubin testified that he did not know Dr. Van Doren. But Dr. Van Doren seemed to be trying to communicate is own concerns by noting that Dr. Plumb was unable to explain his past behavior and admitted to playing "mind games" and lacking empathy.

64. Dr. Rubin testified that the only time Dr. Plumb showed an emotional response was when Dr. Rubin wondered whether Dr. Plumb's father's death may have been a suicide.

65. With respect to Dr. Plumb's history of possible substance abuse, Dr. Rubin testified that Dr. Plumb kept deflecting and deferring questions, insisting that he had "lied to the other doctor." When Dr. Rubin asked Dr. Plumb how lying compared to the high expectations that society has of physicians, Dr. Plumb could not respond.

66. Dr. Rubin testified that he asked Dr. Plumb what he would do if he lost his residency at Mayo Clinic. Dr. Plumb had responded, "moonlighting," which was a concern because he would be unsupervised.

67. Dr. Rubin testified that he had to diagnose Dr. Plumb with an Axis II personality disorder, based on the history provided and the position he took with Dr. Rubin. People with borderline personality disorder decompensate under stress and may go into a psychotic episode. The disorder is often associated with substance abuse.

68. Dr. Rubin testified that people usually are between 30 and 40 on the Axis V score when they are admitted to a psychiatric facility. When they are discharged, they are usually between 40 and 50. He felt that Dr. Plumb was right in the middle, at 45.

69. Dr. Rubin recommended that Dr. Plumb undergo substance abuse monitoring for at least two years, with reports to the Board, although Dr. Plumb did not believe that a residential inpatient evaluation or treatment program was warranted at this time.

70. Dr. Rubin opined that Dr. Plumb will not be fit to practice independently for some time. He needs to complete his current or another residency. He also needs to continue psychiatric treatment, with quarterly reports to the Board. Dr. Rubin feels that Dr. Plumb will not be fit to return to an independent practice for at least a year after the August 29, 2007 incident. After a year, Dr. Plumb may resume an independent practice if his treating psychiatrist releases him to return to an independent medical practice and a forensic evaluation by a Board-approved psychiatrist confirms his fitness.

71. Dr. Rubin testified that, with respect to the residency, he believes that Dr. Plumb may be fit to return to a residency program and practice under the supervision of other physicians six months after the August 29, 2007 incident. But it would be up to the residency program to determine the terms under which Dr. Plumb could practice. Some residency programs are about to absorb disabled physicians, for example, by using them in a research capacity.

72. Dr. Rubin testified on cross-examination that he had considered the effect of Dr. Plumb's wisdom teeth extraction on August 24, 2007, but felt it was not the cause of Dr. Plumb's symptoms and behavior on August 29, 2007. Dr. Plumb had admitted into evidence an article from

Rev. Med. Suisse Romande entitled "A Case of Acute Delusional Psychosis Secondary to Dental Infection."[15]

73. Dr. Rubin testified that he did not know if the article had been peer-reviewed. Moreover, Dr. Guyette's pre-operative note indicated that the crown of the tooth was infected, as opposed to a blood-borne infection. Amoxicillin is commonly prescribed to treat mild infections; if Dr. Plumb had been suffering from a blood-borne infection, another antibiotic would have been prescribed. In his 30 years of practicing psychiatry, Dr. Rubin has never seen a tooth infection become a prelude to a psychotic episode.

74. Dr. Rubin admitted that he did not include the observations that Dr. Plumb had been a "model patient" at Desert Vista or that his alleged symptoms had "fully resolved" after August 29, 2007.

[15] *See* Dr. Plumb's Ex. 37. The article recounted the author's experience with M.S., a 44-year-old Yugoslavian patient who lived in France and who complained about a toothache on May 2 and 3, 1987. By May 4, 1987, after a general practitioner diagnosed periodontal pyorrhea of the upper right wisdom tooth and prescribed antibiotics and unspecified analgesics, according to his cousin, M.S. became delusional and "declare[d] that his name written down on the prescription mean[t] that he has been singled to have his throat cut." On May 5, 1987, M.S. was hospitalized and diagnosed with acute delusional psychosis. After being treated with antipsychotic medication, M.S.'s delusions resolved and he was discharged on May 15, 1987, with weekly psychiatric checkups by the author due to M.S.'s inability to speak French. The author, who had died before publication of the article by his friends, describes his treatment of M.S. and the anecdotal evidence to support his theory about the connection between M.S.'s psychosis and dental infection:

> On June 19, 1987, M.S. comes in for a psychiatric checkup with swelling caused by a dental abscess. It is not painful but it deforms the right half of his face. It is only at that time that I am informed by his cousin (who always accompanied him) that M.S.'s mental illness began with pains in the same tooth in early May 1987 (which enables me to retrieve the chronological order of events and collect additional information). When the history was taken, this event was totally forgotten both by the patient himself and by his cousin, despite my insistence on any illness or disorder that might have preceded the appearance of the delirium. I establish that this is an abscess of the decayed upper right wisdom tooth and I insist that the tooth be immediately removed, which is done on June 22, 1987. In the checkup of June 24, the patient already feels clearly better, with no mental tension and no signs of psychosis or anxiety and with an excellent appetite and good sleep.

The Additional Records from Desert Vista

75. The accusation was made that Dr. Rubin selectively had relied upon records that supported his diagnoses of Dr. Plumb and had ignored records that showed that Dr. Plumb had been free of symptoms since he had been admitted to Desert Vista. These records were reviewed at the hearing.

76. On August 30, 2007 at 1255 hours, a Desert Vista Nursing Progress Note stated "Pt oriented to unit. Anticipating visit from lawyer this afternoon. Has spoken [with] family via phone. States he is unhappy [with] hospitalization, but cooperative [with] admission process. Discussed COE/COT process. Pt [illegible] sl sedation from Geodon received @ UPC. Maintaining good eye contact. Denies SI, able to verbally contract for safety. Denies A/V hallucinations."[16]

77. Approximately 10 hours later, at 2230 hours on August 30, 2007 on the same exhibit, the Nursing Progress Note states that "Patient's mood is dysphoric, [17] affect blunted. Pleasant and cooperative. Went to the cafeteria for dinner, but otherwise, isolates to his room. . . ."

78. On August 31, 2007 at 1430 hours, the Desert Vista Nursing Progress Notes state that "pt met [with] tx team. Continues to deny SI. Affect sl blunted. Mood Dysphoric. Attended groups [with] minimal participation. . . ."[18]

79. Seven hours later, the same exhibit shows that, on April 31, 2007 at 2130 hours, "patient's mood is euthymic, affect appropriate. Out in the mileau [*sic*], watching a movie in the day room. Social with select peers. Compliant with his meds and the unit's routine."

[16] Dr. Plumb's Ex. 16. Dr. Rubin testified that "SI" means "suicidal ideation"; "HI" means "homicidal ideation"; "A/V hallucinations" means "audio or visual hallucinations."
[17] Dr. Rubin testified that "euthymic mood" means normal, not indicative of mental illness. In contrast, "dysphoric" means unhappy or irritable.
[18] Dr. Plumb's Ex. 15.

80. On September 1, 2007, at 2215 hours, a Desert Vista Behavioral Health Technician noted that "Patient's mood is quiet and calm, affect appropriate. Social with select peers. Compliant with his meds and the unit's routine."[19]

81. On September 2, 2007 at 1500 hours, the Desert Vista Nursing Progress Note stated that, "pt is pleasant upon approach, med compliant, cooperative/friendly [with] staff, denies SI/HI, attended all groups, pt states his only thing for now is not to be so bored and to keep busy, no problems noted." At 2210 hours, "Pt is pleasant/friendly, cooperated [with] staff, denies SI/HI, denies AH/VH, Pt states he is glad he is here for tx and is feeling good but just bored, Pt states he is only worried about practicing as a MD again and getting good tx, no problems noted."[20]

82. On September 2, 2007 at 2045 hours a Desert Vista Interdisciplinary Progress note stated that "pt visible on unit, pleasant upon approach. Social with peers and staff. Shaved. Read the DSM 4 unit book. 'I'm waiting for my discharge, I'm concerned about how being here is going to affect me being a doctor.' Encouraged pt. to attend unit groups and activities and praised positive behavior. Pt. continues to be social and exhibit positive behavior."[21]

83. On September 3, 2007 at 2210 hours, a Desert Vista Nursing Progress Note stated "Pt compliant [with] medication & unit regime, denies SI/HUI, pt happy to have moved rooms tonight, socialized [with] others well, denies AH/VH cooperative [with] staff, no problems noted.[22]

84. However, on that same exhibit, at 1325 hours on September 3, 2007, the notes stated that "Pt noted by staff to be smiling/laughing to self while in rec tx. Appears to be responding to internal stimuli. . . . Minimizes hx that led to hospitalization."

85. On September 4, 2007 at 1030 hours, the Desert Vista Nursing Progress Note states that "Pt. presently is clear & logical, denying thoughts of wanting to harm himself or others.

[19] Dr. Plumb's Ex. 14.
[20] Dr. Plumb's Ex. 13.
[21] Dr. Plumb's Ex.12.
[22] Dr. Plumb's Ex. 11.

Ø SI/HI, ø AH/VH. No behavioral issues." On September 4 at 1950 hours, "Pt was med/[illegible] compliant, pt. was appropriate with staff and peers. . . . Will continue to monitor."[23]

86. On September 4, 2007, at 2230 hours, a Desert Vista interdisciplinary progress note stated that "pt very visible on unit this shift. Pt attended dinner, smoke breaks and groups. Pt participated freely in group, interacting with peers and staff alike. Pt asked to speak with his employer to figure out where he stands upon discharge. Continue 15 minute safety checks help pt in his treatment goals."[24]

87. On that same exhibit, it was stated that, on September 5, 2007 at 11:15 a.m., "Clt & counselor discussed about the need to open up a little bit & be more himself. Clt states he repress his feelings often [illegible] to be perfect . . . ."

88. The Desert Vista Interdisciplinary Progress Notes stated that, on September 5, 2007 at 2215 hours, Pt. was compliant and respectful throughout the shift. Pt offered no behavior problems. Pt. was visible on unit as he attended smoke breaks and group. Pt did not attend dinner as he stayed on unit and met with his visitor. Pt had a very positive visit with friend. Continue 15 safety checks help support pt in his treatment."[25]

89. The same exhibit continues that, on September 6, 2007 at 1130 hours, Dr. Plumb was "pleasant upon approach and cooperative. Social [with] peers . . . . Admits something is wrong but not necessarily for COT process. Worried about implications [with] [illegible] of being here at hospital, affect appears blunted. Talks about submitting for court or getting a defense attorney. Currently in room reading book Q 15 minute safety checks."

90. On September 7, 2007 at 1500 hours, the Desert Vista notes stated that "Pt [with] appropriate affect, euthymic mood. Social [with] peers. Tolerating Geodon [without] problem. Participates in all groups and unit activities."[26]

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[23] Dr. Plumb's Ex. 34.
[24] Dr. Plumb's Ex. 10.
[25] Dr. Plumb's Ex. 19.
[26] Dr. Plumb's Ex. 43.

91. Five hours later, on the same September 7, 2007 record at 2000 hours, another Desert Vista Behavior Health Technician noted "Patient's mood is dysphoric, effect appropriate. Patient refused to go to Bingo; states he doesn't play games. . . ."

92. Two hours after that, on September 7, 2007 at 2200 hours, a Desert Vista Interdisciplinary Progress Note states that "Patient visible on unit and social with peers. Patient is pleasant and cooperative upon approach. Patient expresses concern about going back to his place of work, as he is afraid they will not be trusting of his ability to perform his job. Patient ate dinner off unit and attended smoke breaks. Encourage groups and 15 min safety checks . . . ."[27]

93. The September 9, 2007 Desert Vista Nursing Progress Notes state, that at 1405 hours, "Pt is med compliant, social [with] peers, denies SI/HI, denies AH/VH, pt stated that he is ready to go home and be with his family and get his life going attain. Cooperative [with] staff attends all groups and participates, no problems noted."[28]

94. The September 10, 2007 Desert Vista Nursing Progress Notes state that, at 1100 hours, "Pt [with] appropriate affect, euthymic mood. Tolerating Geodon [without] problems. Social [with] peers, participating in groups. States "Since I've been here, every day like a Monday." Pleasant on approach. Offers no physical complaints." At 2145 hours, "Pt. attended group and stated that he has not experienced "joy." Group topic was on various emotions. Pt. stated that his fear was that he has disappointed so many people because of what has happened. . . . No behavioral problems."[29]

95. The September 10, 2007 Desert Vista Nursing Progress Notes state that, at 2145 hours, Dr. Plumb was "[v]isible in unit, social [with] peers and staff. Off unit for dinner in cafeteria & smoke breaks. Encourage groups and activities. 15 minute checks for safety Pleasant and cooperative, attended groups and safety maintained."[30]

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[27] Dr. Plumb's Ex. 9.
[28] Dr. Plumb's Ex. 17.
[29] Dr. Plumb's Ex. 20.
[30] Dr. Plumb's Ex. 21.

96. On September 11, 2007, at 0600 hours, the same exhibit stated "Patient compliant [with] medication. Patient interactive [with] staff and peers. Patient presenting no rx issues. Patient tended to hygiene. Patient stated anxiety [illegible] to upcoming court date. Patient to cont tx compliance/Patient Q15 checks for safety."

97. The September 12, 2007 discharge plan from Desert Vista identified that "stresses leading to placement" as "work, relationship, [and] tooth pain extraction."[31] The Axis V GAF was 80. Dr. Plumb's treating psychiatrist Dr. Merrill and social worker Judith E. Lunkley had signed the discharge plan. Dr. Merrill's diagnoses was Psychotic D/O NOS Resolved (Axis I) and deferred Axis II Narcissistic Traits.

98. Dr. Rubin admitted that 80 is a high score. He believes that the social worker, nor Dr. Merrill, assigned this score to Dr. Plumb. The GAF rating scale is subjective and depends on the observer. It is not unusual for people to come to different numbers on different days. Moreover, Dr. Merrill is close to the same age as Dr. Plumb. Dr. Merrill would have been less concerned about the possible progression of Dr. Plumb's disease. Finally, it is common for patients to take a "flight into health" while they are in a protective situation.

99. Dr. Rubin pointed out that Dr. Merrill's original discharge note have the Axis I diagnosis of "Brief Psychotic D/O" and omitted the "resolved."[32]

100. Dr. Rubin testified that the "rule out" diagnoses in Dr. Martin's and Dr. Van Doren's records mean that, if a possible diagnosis cannot be tested, the practitioner must rely on the "tincture of time." The euphemism is a "red flag" to make a concern or provisional diagnosis known. In young adults, personality disorders such as borderline personality disorder may manifest under stress after a 10-year lapse.

[31] *See* Dr. Plumb's Ex. 22.
[32] Dr. Plumb's Ex. 39.

101. Dr. Rubin testified that, in his opinion, the nuances of the Desert Vista treatment notes and "the sensitivity of this case" indicated that Drs. Brennan and Merrill did not feel that Dr. Plumb should be released from Desert Vista.

102. Dr. Rubin testified that the 15 minute safety checks referenced in the Desert Vista records evidenced a serious concern about Dr. Plumb's safety. Dr. Plumb testified that the 15-minute checks were routine; all the patients at Desert Vista were checked every 15 minutes.

Harriet Plumb Messing's Testimony

103. Mrs. Messing testified that, on October 6, 2007, Dr. Plumb had been living in the family home in Tucson. She helped him prepare for his appointment with Dr. Rubin by ironing his shirt, which was a blue-and-white striped Ralph Lauren designer shirt. Dr. Plumb had also chosen to wear boots and "nice" jeans. His hair was crewcut, as always. Mrs. Messing testified that Dr. Plumb was not disheveled when he left for his appointment with Dr. Rubin.

104. Mrs. Messing testified that Dr. Van Doren had cleared Dr. Plumb for travel between Tucson and Phoenix. Dr. Van Doren had also cleared Dr. Plumb for non-medical employment. Dr. Plumb was looking for work.

105. Mrs. Messing testified that the coroner had ruled her first husband's death to be accidental. Mr. Plumb had been changing the antifreeze in her car in the garage and had gotten antifreeze on the sole of his shoe. He went into the house to answer a ringing telephone, leaving the car running, as was required to change antifreeze. When Mr. Plumb went back into the garage, he slipped on a step and gashed his head and somehow hit the garage door opener in the pocket of his windbreaker, which closed the garage door. Dr. Plumb had admitted into evidence the death certificate, which had ruled the death accidental. Mrs. Messing testified that Dr. Rubin's suggestion that Dr. Plumb's father's death had been a suicide was "reckless."

106. Mrs. Messing testified that, in late August, she had called Dr. Plumb four times and left messages. He did not return the messages, which was very unusual. Dr. Plumb is very close to his family.

107. Mrs. Messing testified that she had recommended the book *Of Human Bondage* to Dr. Plumb. Dr. Rubin had gotten the story wrong; the book had a happy ending.

Dr. Plumb's Testimony

108. Dr. Plumb testified that, while he was in high school, he played football, hockey, and in a jazz band. He graduated *cum laude* from University of California at Davis. He graduated in the top quarter of his class from the University of Arizona School of Medicine. He was told that his board scores were the top in his class.

109. Dr. Plumb continued to play hockey while he was in medical school. He testified that he has "quite a few" close friends He traveled to the west coast during his senior year in college and, more recently, to Costa Rica with his step-brothers and other friends. After graduation from medical school, he traveled to Eastern Europe with the same group. He and his brothers and friends call themselves "the Company."

110. Dr. Plumb testified that, after he started at Mayo Clinic in June 2006, he routinely worked between 80 and 100 hours per week. He worked 30+ hour call shifts every 3-4 days. He did not have a lot of time to socialize but nonetheless made close friends during his internship, including James Hart, a senior intern, and Tiffany Lunt, Matt Johnson, and other residents. He recently attended to Dr. Hart's wedding with a date.

111. Dr. Plumb explained that he sometimes experienced loneliness when he returned to his empty apartment after work. Most of his fellow residents were married or engaged and had little time to socialize with a single man.

112. Dr. Plumb testified that Dr. Hovan was a resident advisor. Dr. Hovan is well-respected at Mayo Clinic family medicine residency program and became Dr. Plumb's mentor. Dr.

Plumb looked up to Dr. Hovan. Dr. Hovan called Dr. Plumb "the professor" because Dr. Plumb was knowledgeable about many different things. Dr. Hovan had told Dr. Plumb that, later in the second year of his residency, he should run for the chief residency position, which is a liaison between residents and faculty and is determined by a vote among residents. Dr. Hovan had also invited Dr. Plumb to dinner at his home, even though there was not much fraternization between faculty and residents at Mayo Clinic. Dr. Hovan had given Dr. Plumb substantial feedback, and had let him know that he was well thought of and well liked at Mayo Clinic and there were no problems with is residency.

113. Dr. Plumb testified that, in February 2007, he did a rotation in pediatrics. Due to an outbreak of RSV in the pediatric population, he worked 21 14-hour days straight and 30-35 hours straight if he were on call, in violation of guidelines issued by the Associated Council for Graduate Medical Education ("ACGME"), which accredits residency programs. Residents are told to avoid violation of ACGME guidelines but sometimes cannot, because they're the only medical provider. Dr. Plumb testified that it was not acceptable in the Mayo Clinic program for residents to take time off for minor illnesses or social commitments.

114. Dr. Plumb testified that he started a cardiology program in July 2007. The program head wrote him a very complimentary e-mail. He tried to obtain a copy of the e-mail for the hearing, but access to his e-mail account had been blocked.

115. Dr. Plumb had admitted into evidence the results of a Hair 5 Drug Panel of hair taken on October 29, 2007.[33] The test was negative for amphetamines, cocaine metabolites, opiates, phencyclidine, and THC metabolites.

116. Dr. Plumb testified that he has not drunk alcohol at all since October 2007. Between September 12, 2007 and early October, he may have had a beer or two with his brothers.

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[33] Dr. Plumb's Ex. 47.

He did not drink while he was taking the Geodon, because alcohol is contraindicated. Dr. Plumb testified that he drank twice in August 2007. He had one or two cocktails at a party the Friday before he had his wisdom teeth removed and, on August 28, 2007, had a glass of wine with dinner on a date. He does not remember drinking at all for June, July, or the remainder of August 2007.

117. Dr. Plumb testified that he did have several drinks at a wedding in late May 2007. Between January and May, 2007, he drank "rarely." Before that, he also drank rarely.

118. Dr. Plumb testified that, since he started his residency, he did not use any drugs except those that had been prescribed to him. He has never evaluated or treated a patient while under the influence of drugs or alcohol.

119. Dr. Plumb testified that he has never abused legal or illegal drugs, although he did experiment on a limited basis. As an undergraduate, he tried methamphetamine once and cocaine twice. He tried marijuana in high school, but did not like it. He last used illegal drugs at least five years ago, when he received his undergraduate degree.

120. Dr. Plumb testified that, after the cardiology rotation, he did an elective emergency medicine rotation at the Cigna Urgent Care Clinic in Glendale. He was also doing a required clinic in primary or continuity of care under the supervision of a member of the faculty. He was told that he was required to spend 40 hours per week at the Urgent Care Clinic but that the time was "flex time."

121. Dr. Plumb testified that, on August 12, 2007, he had a toothache. So he stayed at home and called oral surgeon Dr. Guyette to schedule surgery. Before August 12, 2007, he had never missed work required by his residency. Dr. Plumb testified that he experienced increasing pain and malaise from his wisdom teeth. He kept thinking that, after he felt better, he could make the time up by working two 20-hour shifts over the weekend, which is not unusual. By the weekend, he felt worse but did not call anyone. After he missed work the first weekend, he realized

he had "dug himself into a hole." He still did not call anyone. In retrospect, he knows that his failure to contact anyone about missing work or his condition was a mistake.

122. Dr. Plumb was supposed to attend a Mayo Clinic recruitment dinner in Tucson on the weekend before the scheduled wisdom teeth extraction. But he felt too ill to drive to Tucson. He did not call anyone at Mayo Clinic to tell them he was ill because he felt ashamed. He feared he would lose his residency.

123. Dr. Plumb testified that he believed that his condition would quickly improve after he underwent oral surgery to remove the wisdom teeth. But it did not: his gums were bleeding and had pus and he vomited blood. He was not able to eat. Dr. Guyette had prescribed 2 tabs of Lortab every 4-6 hours. Dr. Plumb took 3 tabs for the first dose because he was in such severe pain.

124. Dr. Plumb testified that he had appeared to work at the Continuity of Care Clinic, but not after taking Lortab. Late in the first day following the wisdom teeth extraction, Dr. Plumb had a dead battery in his car. Dr. Plumb testified that Dr. Edwards had testified at the civil commitment hearing that he had not missed work at the continuity of care clinic.

125. Dr. Plumb testified that, after the second weekend passed, he stayed in his apartment, hiding. He had worked very hard to get to that point in his career. He did not talk to his family. He was "waiting for the sword to fall." He tried to sleep, but couldn't, due to the pain from his teeth.

126. Dr. Plumb testified that he went out on a date on the evening of August 28, 2007. When his family came to check up on him, he did not respond because he did not want to reveal that he had been missing work and "wouldn't be a resident anymore." He did not know his date, so did not have to worry about keeping up appearances for her.

127. Dr. Plumb testified that, when Dr. Edwards came to his apartment, he heard knocking. He kept turning the music up because he did not want to talk to anyone. When he heard

a "breaking noise," he went into the closet to get dressed. He asked the police whether breaking into his apartment was constitutional.

128. Dr. Plumb testified that Dr. Edwards and his friend Dr. Tiffany Lunt told him that they were concerned about him and wanted him to go to the Mayo Clinic to be treated by a psychiatrist. Dr. Plumb did not want to go to the emergency room because his fellow residents would see him and he would be embarrassed. Dr. Edwards said he could be seen at the Occupational Health Department. Dr. Plumb was very concerned about confidentiality because, if his fellow residents saw him, he would be "humiliated." Dr. Edwards assured him that only he and Dr. Lunt would know about the treatment.

129. Dr. Plumb testified that, when they drove into the Mayo Clinic parking lot, Dr. Hovan met them. Dr. Plumb knew that Dr. Edwards had lied. Dr. Hovan was the physician that Dr. Plumb most respected at Mayo Clinic. Seeing him in the parking lot made Dr. Plumb very hurt and angry.

130. Dr. Plumb testified that he waited 20 or 30 minutes for Dr. Martin. When she began the interview, he was still very hurt and angry about Dr. Edwards breaking down his door and about Dr. Edwards telling Dr. Hovan about the incident. Dr. Plumb knew that Dr. Martin was expecting him to behave as if he was mentally ill, so he fabricated answers to appear especially ill.

131. Dr. Plumb testified that he has tremendous regrets about missing work because his tooth ached and he had been overworked. He would have told the truth except that he was feeling ill and needed time off.

132. Dr. Plumb testified that Dr. Martin interviewed him on a Wednesday. He had been planning a long trip with his brother to the east coast the following weekend. When he told Dr. Lunt and another resident that he would not see them the next week, he was referring to the planned trip, not to an intention to commit suicide.

133. Dr. Plumb testified that, after he told Dr. Martin about the homunculus, that he was immune to conventional weapons, that he had taken a massive overdose of the Lortab, and that his former girlfriend had filed a restraining order against him, Dr. Martin "appeared visibly shaken and frightened" and said he should be hospitalized. He said he would think about it.

134. Dr. Plumb testified he was alone with a security guard for about an hour. Later he met with his attorney, Mr. Messing, and his mother and sister. His family was not concerned about whether he ever worked as a physician; they just wanted him to be happy. He and his family agreed that it would be better for him to seek voluntary treatment in Tucson.

135. Dr. Plumb testified that, after his family left, Dr. Martin returned with the CPR representative to evaluate him for involuntary commitment. He had calmed down and was feeling better. He told Dr. Martin that he had fabricated most of the interview.

136. After Dr. Martin left, the involuntary commitment proceedings continued. The police came, Dr. Plumb was handcuffed and strapped to a gurney, and wheeled through the emergency room to an ambulance, which transported him to Desert Vista.

137. Dr. Plumb testified that he cooperated at all times in his treatment and evaluation at Desert Vista. He was at Desert Vista for two weeks. He understood that he would need to be hospitalized for 72 hours, beginning on the first full day. Because the first full day was the Friday before the Labor Day weekend and the first hearing date on the court calendar was September 12, 2007, the 72 hours stretched into two weeks.

138. Dr. Plumb testified that he was started on Geodon and kept taking Geodon until shortly after his discharge from Desert Vista. Geodon made Dr. Plumb feel fatigued and made it difficult for him to concentrate. He complained about the side effects to Dr. Van Doren, who Dr. Plumb testified was "especially on guard against manipulation," and Dr. Van Doren discontinued the Geodon on October 2, 2007. Dr. Plumb testified that he has had no ill effects of the discontinuance of the Geodon.

139. Dr. Plumb testified that he started seeing Dr. Van Doren three or four days after he was discharged from Desert Vista and returned to his family in Tucson. Dr. Plumb admitted to telling Dr. Martin a "whopper," testified he had told the truth to the CPR representative, and testified that he did not tell the truth to caregivers at Desert Vista because he was "trying to negotiate what to say to earn release." Over the Labor Day weekend, he concluded that he could not live with lying to his physician and needed to tell the truth to obtain appropriate medical care and maintain honesty.

140. Dr. Plumb testified that, after Dr. Van Doren released him to return to non-medical work, he sent out resumes and enrolled in a Spanish class, so that when he goes back to work he can be a better doctor.

141. Dr. Plumb testified that he received his medical license while he was hospitalized at Desert Vista. He has never seen or tried to see a patient since he received his license because he does not think that he is sufficiently trained to see patients on his own. When he mentioned moonlighting to Dr. Rubin, he was referring to the practice among third-year residents at Mayo Clinic, which was "unofficially encouraged." To moonlight, a resident would need clearance from the Mayo Clinic program director. Dr. Plumb has never asked for such clearance. If he moonlighted without such clearance, his residency could be terminated. Dr. Plumb testified that he never told Dr. Rubin that he was thinking of working as a doctor without completing his residency.

CONCLUSIONS OF LAW

1. The Board is the duly constituted authority for licensing and regulating the practice of allopathic medicine in the State of Arizona. This matter lies within its jurisdiction.

2. The Board bears the burden of proof and must establish cause to penalize Dr. Plumb's license under applicable statute by a preponderance of the evidence.[34] Dr. Plumb bears the burden of proof to establish affirmative defenses by the same evidentiary standard.[35]

[34] *See* A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

3. Dr. Plumb argued that the Board had violated his right to due process by not accommodating his own or his attorney's schedules and delaying the second Board interview and the Board meeting that resulted in the order summarily suspending his license. Division 1 of the Arizona Court of Appeals has recognized a similar claim in a recent opinion:

> Petitioner asserts a property interest in his dental license and entitlement to due process before that license is taken or impaired. *See Comeau v. Ariz. State Bd. of Dental Exam'rs*, 196 Ariz. 102, 106, ¶ 18, 993 P.2d 1066, 10070 (App. 1999). The State is authorized to protect the public health by regulating those who practice a profession. *See Ariz. State Bd. of Dental Exam'rs v. Fleischman*, 167 Ariz. 311, 314, 806 P.2d 900, 903 (App. 1990). But, "[f]or those who are qualified, the practice of a profession is a right, not just a privilege," and "[b]efore the State can curtail that right, it must afford due process of law." *Schillerstrom v. State*, 180 Ariz. 468, 471, 885 P.2d 156, 159 (App. 1994) (citing *Application of Levine*, 97 Ariz. 88, 90-91, 397 P.2d 205, 206-07 (1964)).

Dahnad v. Buttrick, 201 Ariz. 394, 398, ¶14, 36 P.3d 742, 746 (App. 2001).

4. A.R.S. § 41-1092.11(B) provides as follows:

> Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. *If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action.* These proceedings shall be promptly instituted and determined.

[Emphasis added.] This statute "contemplate[s] and permit[s] a summary suspension without notice or a pre-suspension hearing when emergency circumstances imperatively require such action before a hearing can be provided," as long as a formal post-suspension hearing is "promptly instituted and determined." *Dahnad*, 201 Ariz. at 399, ¶18, 36 P.2d at 747.

5. The Board provided Dr. Plumb with unsigned consent decrees on October 1 and October 11, 2007, both of which did not require any admission of wrongdoing but only required that he agree not to practice medicine. Dr. Plumb declined to sign both decrees. The Board also continued its interview once to accommodate Dr. Plumb and his attorney.

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[35] A.A.C. R2-19-119(B)(2).

6. Although Dr. Plumb argues that he was not practicing allopathic medicine in any event, the Board is not required to accept a licensee's avowal. It appears that the Board attempted to work with Dr. Plumb out of solicitude from him and his family. But the protection of the public health, safety and welfare may require the Board to ensure that a doctor who is physically or mentally unable to safely practice medicine cannot lawfully practice medicine.

7. Under A.R.S. § 41-1092.11(B), if the Board found that the public health, safety, or welfare imperatively required emergency action, it could have summarily suspended Dr. Plumb's license without any advance notice whatsoever.

8. On October 11, 2007, Dr. Plumb had been placed on disability from the Mayo Clinic residency program after he stopped meeting his responsibilities and made bizarre and alarming statements to a Mayo Clinic psychiatrist. He had avoided involuntary commitment only by voluntarily agreeing to undergo psychiatric treatment. Even if Dr. Plumb had told the truth to Dr. Rubin and at hearing that he had lied to Dr. Martin out of pique, his behavior showed such extraordinarily poor judgment, especially for a licensed physician with a prior stellar record at Mayo Clinic, to cause concern about his ability to safely practice. As of October 11, 2007, various psychiatrists had diagnosed Dr. Plumb with Psychosis NOS, Adjustment Disorder with Disturbance of Mood and Conduct, Borderline Personality with Narcissistic and Antisocial Traits. Dr. Van Doren had given the rule-out diagnoses of Psychotic Disorder, Bipolar Disorder NOS, and Antisocial Personality.

9. With this undisputed evidence, the Board has borne its burden to establish that protection the public health, safety, and welfare required it to take emergency action under A.R.S. § 42-1092.11(B) and A.R.S. § 32-1451(D).[36] Because the Board's findings were neither arbitrary nor

[36] This statute is similar to A.R.S. § 41-1092.11(B) and provides:

> If the board finds, based on the information it receives . . . that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other

capricious nor an abuse of the Board's discretion, the October 11, 2007 order summarily suspending Dr. Plumb's license must be upheld.

10. The drug tests show that that Dr. Plumb probably has not been using cocaine, methamphetamine, or marijuana. Although the hair samples were not tested for alcohol or a narcotic such as the hydrocodone in Lortab, it does not appear that Dr. Plumb was actively abusing any substance in August, September, and October 2007. A residential substance abuse evaluation is not warranted at this time.

11. But Dr. Plumb has not borne his burden of proof to establish that it is more likely than not that the bizarre behavior that led to his evaluation by Dr. Martin and his statements to Dr. Martin were more likely than not manifestations of an unusual medical and psychiatric condition caused by the extraction of his wisdom teeth. He has not established that, as of the date of the hearing, he was fully recovered.

12. Dr. Plumb has established that his condition has improved substantially. The Board should defer to Mayo Clinic's or another residency program's determination of when Dr. Plumb should be allowed to resume or begin another residency, under appropriate supervision.

13. Dr. Rubin's testimony taken as a whole was credible, although his sartorial standards may be unduly harsh and his literary inferences may be suspect. Because the cause of Dr. Plumb's crisis and the truth of his various statements at various times to various doctors remain at issue, the Board has borne its burden to establish a need for non-disciplinary substance abuse monitoring and practice restrictions.

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action. If the board takes action pursuant to this subsection it shall also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days.

ORDER

Based upon the Findings of Fact and Conclusions of Law as adopted, the Board hereby enters the following Order:

1. On the effective date of the Board's order in this matter, the Board lifts the summary suspension imposed on October 11, 2007 and reinstates License No. 37523 previously issued to Dr. Plumb, subject to the following conditions as a non-disciplinary practice limitation:

2. Dr. Plumb's license is limited in that for at least twelve months, Dr. Plumb should remain under the care of a Board-approved psychiatrist, who may be Dr. Van Doren, subject to the Board's approval, at Dr. Plumb's own expense.

3. Dr. Plumb shall instruct his treating psychiatrist to issue quarterly reports to the Board about his diagnosis, treatment, and prognosis, on March 15, June 15, September 15, and December 15 of each year.

4. Dr. Plumb shall not enter an independent medical practice until (a) he meets with the Board and receives its approval to do so, (b) his treating psychiatrist releases him to such practice and (c) a forensic psychiatric examination by a Board-approved psychiatrist, at Dr. Plumb's cost, confirms his return to a pre-morbidity level of functioning and ability to safely practice independently, with no signs of mental illness.

5. For two years, Dr. Plumb shall be subject to random drug and alcohol monitoring by a Board-approved testing service, at his expense.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review by filing a petition with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09. The petition must set forth legally sufficient reasons for granting a rehearing. A.C.C. R4-16-103. Service of this order is effective five (5) days after date of mailing. If a motion for rehearing is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing is required to preserve any rights of appeal to the Superior Court.

Dated this 11th day of February, 2008.

ARIZONA MEDICAL BOARD

By: _____
Lisa Wynn
Executive Director

Original of the foregoing filed this
11th day of February, 2008, with:

Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, AZ 85258

Copy of the foregoing filed this
11th day of February, 2008, with:

Cliff J. Vanell, Director
Office of Administrative Hearings
1400 W. Washington, Ste. 101
Phoenix, AZ 85007

Executed copy of the foregoing mailed
by US Mail this 11th day of February, 2008, to:

Daniel I. Plumb, M.D.
(Address of record)

Dean Brekke
Assistant Attorney General
Office of the Attorney General
CIV/LES
1275 W. Washington
Phoenix, Arizona 85007

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