BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **JOHN W. HOWLEY, M.D.** Holder of License No. 22390 For the Practice of Allopathic Medicine In the State of Arizona	Case No. MD-05-0242A **CONSENT AGREEMENT FOR LETTER OF REPRIMAND AND PROBATION**

CONSENT AGREEMENT

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

1. Respondent acknowledges that he has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges that he has the right to consult with legal counsel regarding this matter and has done so or chooses not to do so.

2. Respondent understands that by entering into this Consent Agreement, he 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. Respondent acknowledges and understands that this Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. All admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by Respondent are not intended or made for any other use, such as in the context of another state or federal government

regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or any other state or federal court.

5. Respondent acknowledges and agrees that, although the Consent Agreement has not yet been accepted by the Board and issued by the Executive Director, upon signing this agreement, and returning this document (or a copy thereof) to the Board's Executive Director, Respondent may not revoke the acceptance of the Consent Agreement. Respondent may not make any modifications to the document. Any modifications to this original document are ineffective and void unless mutually approved by the parties.

6. Respondent further understands that this Consent Agreement, once approved and signed, is a public record that may be publicly disseminated as a formal action of the Board and will be reported to the National Practitioner Data Bank and to the Arizona Medical Board's website.

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

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

J. W. Howley

JOHN W. HOWLEY, M.D.

DATED: 4/3/06

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 22390 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-05-0242A after receiving notification of Respondent's positive test for alcohol that indicated an ethanol level of 0.04. Respondent underwent the test pursuant to the terms and conditions of a May 12, 2004 Interim Order for Participation in the Monitored Aftercare Program ("Interim Order").

4. On January 12, 2005 Respondent was issued a Board Order for a Letter of Reprimand ("2005 Order") and participation in the Monitored Aftercare Program ("MAP"). The 2005 Order superseded Interim Order; however, it was not in effect at the time Respondent tested positive for alcohol.

5. Respondent initially admitted to consuming non-alcoholic beer. He subsequently admitted to violating Interim Order by drinking alcohol on two separate occasions.

6. On May 6, 2005 Respondent signed an Interim Consent Agreement for Practice Restriction and Inpatient Treatment requiring him to cease practicing medicine and enter inpatient treatment at the Betty Ford Center ("Betty Ford").

7. Betty Ford discharged Respondent with a diagnosis of alcohol dependence in early full remission.

8. Based on the recommendation from Betty Ford and an interview with Respondent the Board's contracted addiction medicine specialist opined that Respondent was safe to return to the practice of medicine and recommended that Respondent return to work under the terms of his 2005 Order.

9. On July 29, 2005 the Interim Consent Agreement for Practice Restriction and Inpatient Treatment was vacated.

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)(f) – ("[h]abitual intemperance in the use of alcohol or habitual substance abuse.").

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to 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 the provisions of this chapter.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand for violating a Board Order.

2. Respondent is placed on probation for five years[1] with the following terms and conditions.

a. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation. The declarations shall be submitted on or before the 15th of March, June, September and December of each year, beginning on or before March 15, 2006.

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[1] Beginning date of Probation retroactive to July 15, 2005.

b. Respondent shall participate in the Board's Monitored Aftercare Program pursuant to the following:

1. Participation. Respondent shall promptly enroll in and participate in the Monitored Aftercare Program ("MAP") for the treatment and rehabilitation of physicians who are impaired by alcohol or drug abuse. Respondent shall remain in MAP for five years from the effective date of this Order. Respondent's participation in MAP may be unilaterally terminated with or without cause at the Board's discretion at any time after the issuance of this Order.

2. Group Therapy. Respondent shall attend MAP's group therapy sessions one time per week for the duration of this Order, unless excused by the MAP group therapist for good cause such as illness or vacation. Respondent shall instruct the MAP group therapist to release to Board Staff, upon request, all records relating to Respondent's treatment, and to submit monthly reports to Board Staff regarding attendance and progress. The reports shall be submitted on or before the 10th day of each month.

3. 12 Step or Self-Help Group Meetings. Respondent shall attend ninety 12-step meetings or other self-help group meetings appropriate for substance abuse and approved by Board Staff, for a period of ninety days beginning not later than either (a) the first day following Respondent's discharge from chemical dependency treatment or (b) the date of this Order.

4. Following completion of the ninety meetings in ninety days, Respondent shall participate in a 12-step recovery program or other self-help program appropriate for substance abuse as recommended by the MAP group therapist and approved by Board Staff. Respondent shall attend a minimum of three 12-step or other self-help program meetings per week.

5. **Board-Staff Approved Primary Care Physician.** Respondent shall promptly obtain a primary care physician and shall submit the name of the physician to Board Staff in writing for approval. The Board-approved primary care physician ("PCP") shall be in charge of providing and coordinating Respondent's medical care and treatment. Except in an *Emergency*, Respondent shall obtain medical care and treatment only from the PCP and from health care providers to whom the PCP refers Respondent. Respondent shall request that the PCP document all referrals in the medical record. Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and provide a copy of this Order the PCP. Respondent shall also inform all other health care providers who provide medical care or treatment that Respondent is participating in MAP.

a. "*Emergency*" means a serious accident or sudden illness that, if not treated immediately, may result in a long-term medical problem or loss of life.

6. **Medication.** Except in an *Emergency*, Respondent shall take no *Medication* unless the PCP or other health care provider to whom the PCP refers Respondent prescribes the *Medication*. Respondent shall not self-prescribe any *Medication*.

a. "*Medication*" means a prescription-only drug, controlled substance, and over-the counter preparation, other than plain aspirin, plain ibuprofen, and plain acetaminophen.

7. If a controlled substance is prescribed, dispensed, or is administered to Respondent by any person other than PCP, Respondent shall notify the PCP in writing within 48 hours. The notification shall contain all information required for the medication log entry specified in paragraph 8. Respondent shall request that the notification be made a part of the medical record. This paragraph does not authorize Respondent to take any *Medication* other than in accordance with paragraph 6.

8. **Medication Log.** Respondent shall maintain a current legible log of all

Medication taken by or administered to Respondent, and shall make the log available to the Board Staff upon request. For *Medication* (other than controlled substances) taken on an on-going basis, Respondent may comply with this paragraph by logging the first and last administration of the *Medication* and all changes in dosage or frequency. The log, at a minimum, shall include the following:

a. Name and dosage of *Medication* taken or administered;

b. Date taken or administered;

c. Name of prescribing or administering physician;

d. Reason *Medication* was prescribed or administered.

This paragraph does not authorize Respondent to take any *Medication* other than in accordance with paragraph 6.

9. **<u>No Alcohol or Poppy Seeds</u>.** Respondent shall not consume alcohol or any food or other substance containing poppy seeds or alcohol.

10. **<u>Biological Fluid Collection.</u>** 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, the MAP group therapist, or the 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.

11. 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.

12. 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.

13. **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.

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

15. **Examination.** Respondent shall submit to mental, physical, and medical competency examinations at such times and under such conditions as directed by the Board to assist the Board in monitoring Respondent's ability to safely perform as a physician and Respondent's compliance with the terms of this Order.

16. **Treatment**. Respondent shall submit to all medical, substance abuse, and

mental health care and treatment ordered by the Board, or recommended by the MAP Director.

17. **Obey All Laws.** Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in the State of Arizona.

18. **Interviews.** Respondent shall appear in person before the Board and its Staff and MAP committees for interviews upon request, upon reasonable notice.

19. **Address and Phone Changes, Notice.** Respondent shall immediately notify the Board in writing of any change in office or home addresses and telephone numbers.

20. **Relapse, Violation.** In the event of chemical dependency relapse by Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent's license shall be ***REVOKED***. Respondent agrees to waive formal hearing on the revocation. In the alternative, Respondent may ***SURRENDER HIS LICENSE*** if he agrees in writing to being impaired by alcohol or drug abuse. A.R.S. § 32-1452(G).

21. **Notice Requirements.**

(A) Respondent shall immediately provide a copy of this Order to all employers and all hospitals and free standing surgery centers where Respondent currently has privileges. Within 30 days of the date of this Order, Respondent shall provide the Board with a signed statement of compliance with this notification requirement. Upon any change in employer or upon the granting of privileges at additional hospitals and free standing surgery centers, Respondent shall provide the employer, hospital or free standing surgery center with a copy of this Order. Within 30 days of a change in employer or upon the granting of privileges at additional hospitals and free standing surgery centers, Respondent shall provide the Board with a signed statement of compliance with this notification requirement.

(B) Respondent is further required to notify, in writing, all employers, hospitals and free standing surgery centers where Respondent currently has or in the future gains employment or privileges, of a chemical dependency relapse, use of drugs or alcohol in violation of this Order and/or entry into a treatment program. Within seven days of any of these events Respondent shall provide the Board written confirmation of compliance with this notification requirement.

(C) Respondent shall immediately submit to the Board under penalty of perjury, on a form provided by the Board, the name(s) and address(es) of all employers and all hospitals and free standing surgery centers where Respondent currently holds privileges to practice. Respondent is further required to, under penalty of perjury, on a form provided by the Board, immediately notify the Board of any changes in employment and of any hospitals and free standing surgery centers where Respondent gains privileges after the effective date of this Order.

22. **Public Record.** This Order is a public record.

23. **Out-of-State.** In the event Respondent resides or practices as a physician in a state other than Arizona, Respondent shall participate in the rehabilitation program sponsored by that state's medical licensing authority or medical society. Respondent shall cause the monitoring state's program to provide written reports to the Board regarding Respondent's attendance, participation, and monitoring. The reports shall be due quarterly on or before the 15th day of March, June, September, and December of each year, until the Board terminates this requirement in writing. The monitoring state's program and Respondent shall immediately notify the Board if Respondent: a) is non-compliant with any aspect of the monitoring requirements; b) relapses; c) tests positive for controlled substances; d) has low specific gravity urine drug test(s), missed and/or late

urine drug tests, or otherwise rejected urine drug tests; and e) is required to undergo any additional treatment.

24. This Order supersedes all previous consent agreements and stipulations between the Board and Respondent.

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

3. This Order is the final disposition of case number MD-05-0242A.

DATED AND EFFECTIVE this 9th day of June, 2005.

(SEAL)

ARIZONA MEDICAL BOARD

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

ORIGINAL of the foregoing filed this 9th day of June, 2005 with:

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

EXECUTED COPY of the foregoing mailed this 9th day of June, 2005 to:

John W. Howley, M.D.
Address of Record

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Investigational Review