

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **FRANC W. BRODAR, M.D.**

4 Holder of License No. 24079
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-18-0427A

**ORDER FOR LICENSE
REACTIVATION, DECREE OF
CENSURE AND PROBATION, AND
CONSENT TO THE SAME**

7 Franc W. Brodar, M.D. ("Respondent") elects to permanently waive any right to a
8 hearing and appeal with respect to this Order for License Reactivation, Decree of Censure
9 and Probation; admits the jurisdiction of the Arizona Medical Board ("Board"); and
10 consents to the entry of this Order by the Board.

11 **FINDINGS OF FACT**

12 1. The Board is the duly constituted authority for the regulation and control of
13 the practice of allopathic medicine in the State of Arizona.

14 2. Respondent is the holder of license number 24079 for the practice of
15 allopathic medicine in the State of Arizona.

16 3. The Board initiated case number MD-18-0427A after receiving Respondent's
17 request for license reactivation.

18 4. Respondent participated in the Board's Physician Health Program ("PHP")
19 from August 21, 2006 through August 22, 2011 pursuant to an Order for Letter of
20 Reprimand and Probation; and Consent to Same ("Probation Order"). Respondent
21 successfully completed the terms and conditions of the Probation Order, and it was
22 terminated.

23 5. On January 28, 2018, Respondent's employer suspended his clinical
24 privileges after he admitted to writing a prescription for a nurse and then requesting that
25 she fill it and return the medication to him. The employer did not identify any patient care
concerns in the time period preceding Respondent's suspension.

1 6. Respondent presented to the PHP Contractor for an assessment on
2 February 2, 2018, who opined that Respondent was not safe to practice.

3 7. On February 9, 2018, Respondent requested that his license be placed on
4 "Inactive with Cause" status, which the Board's Executive Director approved.

5 8. On February 6, 2018, Respondent entered into treatment at a Board-
6 approved inpatient treatment facility and was discharged with staff approval on May 9,
7 2018. Based on the findings and conclusions from Respondent's course of treatment, the
8 facility determined that Respondent is safe to return to the practice of medicine subject to
9 his participation in PHP for a period of five years.

10 9. On May 15, 2018, Respondent requested reactivation of his medical license.

11 10. Board staff stated that according to the Board's three-strike policy, this is
12 Respondent's "second strike."

13 **CONCLUSIONS OF LAW**

14 1. The Arizona Medical Board possesses jurisdiction over the subject matter
15 hereof and over Respondent.

16 2. The Board has received substantial evidence supporting the Findings of Fact
17 described above and said findings require the Board to either refer the matter for formal
18 hearing to revoke Respondent's license or reactivate Respondent's license and place
19 Respondent on probation for five years with restrictions necessary to assure public safety.
20 A.R.S. § 32-1452(F).

21 3. The conduct and circumstances described above constitute unprofessional
22 conduct pursuant to A.R.S. § 32-1401(27)(f) ("A pattern of using or being under the
23 influence of alcohol or drugs or a similar substance while practicing medicine or to the
24 extent that judgment may be impaired and the practice of medicine detrimentally
25 affected.(").

1 4. The conduct and circumstances described above constitute unprofessional
2 conduct pursuant to A.R.S. § 32-1401(27)(g) ("Using controlled substances except if
3 prescribed by another physician for use during a prescribed course of treatment.").

4 5. The conduct and circumstances described above constitute unprofessional
5 conduct pursuant to A.R.S. § 32-1401(27)(j) ("Prescribing, dispensing or administering any
6 controlled substance or prescription-only drug for other than accepted therapeutic
7 purposes.").

8 6. The conduct and circumstances described above constitute unprofessional
9 conduct pursuant to A.R.S. § 32-1401(27)(r) ("Committing any conduct or practice that is
10 or might be harmful or dangerous to the health of the patient or the public.").

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

15 **ORDER**

16 IT IS HEREBY ORDERED that:

17 Respondent's license is reactivated upon payment of the renewal fee. Respondent is
18 placed on Probation with the following terms and conditions:

- 19 1. Respondent's license is issued a Decree of Censure.
- 20 2. Respondent shall enroll and participate in the Board's PHP for a period of
21 five (5) years.
- 22 3. Respondent shall not consume alcohol or any food or other substance
23 containing poppy seeds or alcohol.
- 24 4. Respondent shall not take any illegal drugs or mood altering medications
25 unless prescribed for a legitimate therapeutic purpose.

1 5. Respondent shall continue to participate in any personalized aftercare
2 programs or activities as recommended by the inpatient facility and approved by PHP.
3 Respondent shall report on those activities as requested by the PHP, including executing
4 any releases necessary to allow the PHP to monitor his participation and communicate
5 directly with and obtain records from the treating providers for those aftercare activities.
6 Respondent shall be responsible for all costs of aftercare, including costs associated with
7 compliance of this Board Order.

8 6. Respondent shall promptly obtain a Primary Care Physician ("PCP") and
9 shall submit the name of the physician to the PHP Contractor in writing for approval.
10 Except in an Emergency, Respondent shall obtain medical care and treatment only from
11 the PCP and from health care providers to whom the PCP refers Respondent. Respondent
12 shall promptly provide a copy of this Order to the PCP. Respondent shall also inform all
13 other health care providers who provide medical care or treatment that Respondent is
14 participating in the PHP. "Emergency" means a serious accident or sudden illness that, if
15 not treated immediately, may result in a long-term medical problem or loss of life.

16 7. All prescriptions for controlled substances shall be approved by the PHP
17 Contractor prior to being filled except in an Emergency. Controlled substances prescribed
18 and filled in an emergency shall be reported to the PHP within 48 hours. Respondent shall
19 take no Medication unless the PCP or other health care provider to whom the PCP refers
20 Respondent prescribes and the PHP Contractor approves the Medication. Respondent
21 shall not self-prescribe any Medication. "Medication" means a prescription-only drug,
22 controlled substance, and over-the counter preparation, other than plain aspirin, plain
23 ibuprofen, and plain acetaminophen.

24 8. If recommended by the PHP Contractor, Respondent shall attend a relapse
25 prevention outpatient program for a duration and frequency recommended by the PHP

1 Contractor, unless Respondent is excused by the relapse program facilitator for good
2 cause. The relapse prevention group facilitators shall submit monthly reports to the PHP
3 regarding Respondent's attendance and progress.

4 9. If requested by the PHP and not already completed, Respondent shall attend
5 ninety 12-step meetings or other self-help group meetings appropriate for substance
6 abuse and approved by the PHP, for a period of ninety days. Upon completion of the
7 ninety meetings in ninety days, Respondent shall participate in a 12-step recovery
8 program or other self-help program appropriate for substance abuse as recommended by
9 the PHP. Respondent shall attend a minimum of three 12-step or other self-help program
10 meetings per week. Two meetings per month must be Caduceus meetings. Respondent
11 must maintain a log of all self-help meetings.

12 10. Respondent shall submit to random biological fluid, hair and/or nail testing
13 for the remainder of this Order (as specifically directed below) to ensure compliance with
14 the PHP.

15 11. Respondent shall provide the PHP Contractor in writing with one telephone
16 number that shall be used to contact Respondent on a 24 hour per day/seven day per
17 week basis to submit to biological fluid, hair, and/or nail testing to ensure compliance with
18 the PHP. For the purposes of this section, telephonic notice shall be deemed given at the
19 time a message to appear is left at the contact telephone number provided by
20 Respondent. Respondent authorizes any person or organization conducting tests on the
21 collected samples to provide testing results to the PHP Contractor. Respondent shall
22 comply with all requirements for biological fluid, hair, and/or nail collection. Respondent
23 shall pay for all costs for the testing.

24 12. Respondent shall provide the PHP Contractor with written notice of any
25 plans to travel out of state.

1 13. Respondent shall successfully complete a PHP approved 36 hour
2 alcohol/drug awareness education class.

3 14. Respondent shall immediately notify the Board and the PHP Contractor in
4 writing of any change in office or home addresses and telephone numbers.

5 15. Respondent provides full consent for the PHP Contractor to discuss the
6 Respondent's case with the Respondent's PCP or any other health care providers to
7 ensure compliance with the PHP.

8 16. The relationship between the Respondent and the PHP Contractor is a direct
9 relationship. Respondent shall not use an attorney or other intermediary to communicate
10 with the PHP Contractor on participation and compliance issues. All inquiries must be
11 directed to Board staff.

12 17. Respondent shall be responsible for all costs, including costs associated with
13 participating in the PHP, at the time service is rendered or within 30 days of each invoice
14 sent to the Respondent. An initial deposit of two (2) months PHP fees is due upon
15 entering the program. Failure to pay either the initial PHP deposit or monthly fees 60 days
16 after invoicing will be reported to the Board by the PHP Contractor and may result in
17 disciplinary action.

18 18. Respondent shall appear in person before with the PHP Contractor for
19 interviews upon request, upon reasonable notice.

20 19. Respondent shall immediately provide a copy of this Order to all employers,
21 hospitals and free standing surgery centers where Respondent currently has or in the
22 future gains or applies for employment or privileges. Within 30 days of the date of this
23 Order, Respondent shall provide the PHP with a signed statement of compliance with this
24 notification requirement. Respondent is further required to notify, in writing, all employers,
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1 hospitals and free standing surgery centers where Respondent currently has or in the
2 future gains or applies for employment or privileges of a violation of this Order.

3 20. In the event Respondent resides or practices as a physician in a state other
4 than Arizona, Respondent shall participate in the rehabilitation program sponsored by that
5 state's medical licensing authority or medical society. Respondent shall cause the
6 monitoring state's program to provide written quarterly reports to the PHP Contractor
7 regarding Respondent's attendance, participation, and monitoring. The monitoring state's
8 program and Respondent shall immediately notify the PHP Contractor if Respondent is
9 non-compliant with any aspect of the monitoring requirements or is required to undergo
10 any additional treatment.

11 21. The PHP Contractor shall immediately notify the Board if Respondent is non-
12 compliant with any aspect of this Order or is required to undergo any additional treatment.

13 22. In the event of a violation of A.R.S. § 32-1401(27)(f) by Respondent or
14 Respondent's use of drugs or alcohol in violation of the Order, Respondent's license shall
15 be **summarily suspended pending a hearing for revocation**. In the alternative,
16 Respondent may **SURRENDER HIS LICENSE** if he agrees in writing to being impaired by
17 alcohol or drug abuse. A.R.S. § 32-1452(G).

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

21 24. Prior to the termination of Probation, Respondent must submit a written
22 request to the Board for release from the terms of this Order. Respondent's request for
23 release will be placed on the next pending Board agenda, provided a complete submission
24 is received by Board staff no less than 30 days prior to the Board meeting. Respondent's
25 request for release must provide the Board with evidence establishing that she has

1 successfully satisfied all of the terms and conditions of this Order. The Board has the sole
2 discretion to determine whether all of the terms and conditions of this Order have been
3 met or whether to take any other action that is consistent with its statutory and regulatory
4 authority.

5 25. The Board retains jurisdiction and may initiate new action against
6 Respondent based upon any violation of this Order. A.R.S. § 32-1401(27)(s).

7 DATED AND EFFECTIVE this 23rd day of August, 2018.

8 ARIZONA MEDICAL BOARD

9 By Patricia E. McSorley

10 Patricia E. McSorley
11 Executive Director

12 **CONSENT TO ENTRY OF ORDER**

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

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

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

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

24 5. All admissions made by Respondent are solely for final disposition of this
25 matter and any subsequent related administrative proceedings or civil litigation involving

1 the Board and Respondent. Therefore, said admissions by Respondent are not intended
2 or made for any other use, such as in the context of another state or federal government
3 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
4 any other state or federal court.

5 6. Upon signing this agreement, and returning this document (or a copy
6 thereof) to the Board's Executive Director, Respondent may not revoke the consent to the
7 entry of the Order. Respondent may not make any modifications to the document. Any
8 modifications to this original document are ineffective and void unless mutually approved
9 by the parties.

10 7. This Order is a public record that will be publicly disseminated as a formal
11 disciplinary action of the Board and will be reported to the National Practitioner's Data
12 Bank and on the Board's web site as a disciplinary action.

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

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

18 10. Any violation of this Order constitutes unprofessional conduct and may result
19 in disciplinary action. A.R.S. § § 32-1401(27)(s) ("Violating a formal order, probation,
20 consent agreement or stipulation issued or entered into by the board or its executive
21 director under this chapter") and 32-1451.

22 **11. Respondent has read and understands the conditions of probation.**

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25 _____
FRANC W. BRODAR, M.D.

DATED: 8/3/18

RECEIVED

FILED

MEDICAL BOARD

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EXECUTED COPY of the foregoing mailed
this 23rd day of August, 2018 to:

Franc W. Brodar, M.D.
ADDRESS OF RECORD

ORIGINAL of the foregoing filed
this 23rd day of August, 2018 with:

Arizona Medical Board
1740 West Adams, Suite 4000
Phoenix, Arizona 85007

Mary Bobey
Board staff