

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **DANIEL M. MERCK, M.D.**

4 Holder of License No. 49945
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-18-0739A

**INTERIM CONSENT AGREEMENT
FOR PRACTICE RESTRICTION**

7 **INTERIM CONSENT AGREEMENT**

8 In lieu of summary suspension pursuant to A.R.S. § 32-1451.02(B), Daniel M.
9 Merck, M.D. ("Respondent") elects to permanently waive any right to a hearing and appeal
10 with respect to this Interim Consent Agreement for Practice Restriction and consents to
11 the entry of this Order by the Arizona Medical Board ("Board").

12 **INTERIM FINDINGS OF FACT**

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

15 2. Respondent is the holder of License No. 49945 for the practice of allopathic
16 medicine in the State of Arizona.

17 3. The Board initiated case number MD-18-0739A after receiving notification
18 that Respondent's Texas medical license had been temporarily suspended without notice
19 of hearing on July 27, 2018

20 4. On July 27, 2018, the Disciplinary Panel of the Texas Medical Board
21 ("Disciplinary Panel") considered an Application for Temporary Suspension of
22 Respondent's Texas medical license. After consideration of the facts and evidence, the
23 Disciplinary Panel issued Findings of Fact, Conclusions of Law and an Order temporarily
24 suspending Respondent's Texas medical license ("Texas Order"). In addition to other
25 findings, the Texas Order noted that Respondent had recently been indicted for

1 Conspiracy to Unlawfully Distribute and Dispense Controlled Substances.¹ The
2 Disciplinary Panel found that Respondent's continuation of the practice of medicine would
3 constitute a continuing threat to the public welfare. A copy of the Texas Order is attached
4 hereto as Exhibit 1.

5 5. The aforementioned information was presented to the investigative staff, the
6 medical consultant and the lead Board member. All reviewed the information and concur
7 that the interim consent agreement to restrict Respondent's practice is appropriate.

8 6. The investigation into this matter is pending and will be forwarded to the
9 Board promptly upon completion for review and action.

10 **INTERIM CONCLUSIONS OF LAW**

11 1. The Board possesses jurisdiction over the subject matter hereof and over
12 Respondent.

13 2. Pursuant to A.R.S. § 32-1405(C)(25) the Executive Director has authority to
14 enter into a consent agreement when there is evidence of danger to the public health and
15 safety.

16 3. Pursuant to A.A.C. R4-16-504, the Executive Director may enter into an
17 interim consent agreement when there is evidence that a restriction is needed to mitigate
18 imminent danger to the public's health and safety. Investigative staff, the Board's medical
19 consultant and the lead Board member have reviewed the case and concur that an interim
20 consent agreement is appropriate.

21 **INTERIM ORDER**

22 IT IS HEREBY ORDERED THAT:

23 1. Respondent is prohibited from engaging in the practice of medicine in the
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¹ *United States of America v. Merck et. al.* U.S. District Court, Southern District of Texas, Houston Division,
Case 4:18-cr-00370

1 State of Arizona as set forth in A.R.S. § 32-1401(22) until Respondent applies to the
2 Executive Director and receives permission to do so.

3 2. Respondent may request, in writing, release and/or modification of this
4 Interim Consent Agreement. Respondent's request must be accompanied by information
5 demonstrating that Respondent is safe to practice medicine. The Executive Director, in
6 consultation with and agreement of the lead Board member and the Chief Medical
7 Consultant, has the discretion to determine whether it is appropriate to release
8 Respondent from this Interim Consent Agreement.

9 3. The Board retains jurisdiction and may initiate new action based upon any
10 violation of this Interim Consent Agreement, including, but not limited to, summarily
11 suspending Respondent's license.

12 4. Because this is an Interim Consent Agreement and not a final decision by
13 the Board regarding the pending investigation, it is subject to further consideration by the
14 Board. Once the investigation is complete, it will be promptly provided to the Board for its
15 review and appropriate action.

16 5. This Interim Consent Agreement shall be effective on the date signed by the
17 Board's Executive Director.

18
19 DATED this 4th day of September, 2018.

20 ARIZONA MEDICAL BOARD

21 By Patricia E. McSorley
22 Patricia E. McSorley
23 Executive Director
24
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RECITALS

Respondent understands and agrees that:

1. The Board, through its Executive Director, may adopt this Interim Consent Agreement, or any part thereof, pursuant to A.R.S. § 32-1405(C)(25) and A.A.C. R4-16-504.

2. Respondent has read and understands this Interim Consent Agreement as set forth herein, and has had the opportunity to discuss this Interim Consent Agreement with an attorney or has waived the opportunity to discuss this Interim Consent Agreement with an attorney. Respondent voluntarily enters into this Interim Consent Agreement and by doing so agrees to abide by all of its terms and conditions.

3. By entering into this Interim Consent Agreement, Respondent freely and voluntarily relinquishes all rights to an administrative hearing on the matters set forth herein, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning the matters related to the Interim Consent Agreement.

4. Respondent understands that this Interim Consent Agreement does not constitute a dismissal or resolution of this matter or any matters that may be currently pending before the Board and does not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding this or any other pending or future investigations, actions, or proceedings. Respondent also understands that acceptance of this Interim Consent Agreement does not preclude any other agency, subdivision, or officer of this State from instituting civil or criminal proceedings with respect to the conduct that is the subject of this Interim Consent Agreement. Respondent further does not

1 relinquish Respondent's rights to an administrative hearing, rehearing, review,
2 reconsideration, judicial review or any other administrative and/or judicial action,
3 concerning the matters related to a final disposition of this matter, unless Respondent
4 affirmatively does so as part of the final resolution of this matter.

5 5. Respondent acknowledges and agrees that upon signing this Interim
6 Consent Agreement and returning it to the Board's Executive Director, Respondent may
7 not revoke Respondent's acceptance of this Interim Consent Agreement or make any
8 modifications to it. Any modification of this original document is ineffective and void unless
9 mutually approved by the parties in writing.

10 6. Respondent understands that this Interim Consent Agreement shall not
11 become effective unless and until it is signed by the Board's Executive Director.

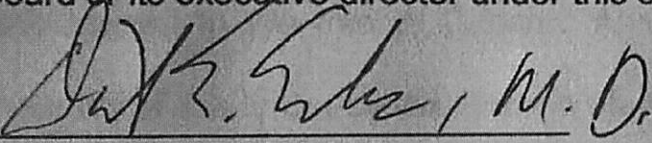
12 7. Respondent understands and agrees that if the Board's Executive Director
13 does not adopt this Interim Consent Agreement, Respondent will not assert in any future
14 proceedings that the Board's consideration of this Interim Consent Agreement constitutes
15 bias, prejudice, prejudgment, or other similar defense.

16 8. Respondent understands that this Interim Consent Agreement is a public
17 record that may be publicly disseminated as a formal action of the Board, and that it shall
18 be reported as required by law to the National Practitioner Data Bank.

19 9. Respondent understands that this Interim Consent Agreement does not
20 alleviate Respondent's responsibility to comply with the applicable license-renewal
21 statutes and rules. If this Interim Consent Agreement remains in effect at the time
22 Respondent's allopathic medical license comes up for renewal, Respondent must renew
23 the license if Respondent wishes to retain the license. If Respondent elects not to renew
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1 the license as prescribed by statute and rule, Respondent's license will not expire but
2 rather, by operation of law (A.R.S. § 32-3202), become suspended until the Board takes
3 final action in this matter. Once the Board takes final action, in order for Respondent to be
4 licensed in the future, Respondent must submit a new application for licensure and meet
5 all of the requirements set forth in the statutes and rules at that time.

6 10. Respondent understands that any violation of this Interim Consent
7 Agreement constitutes unprofessional conduct under A.R.S. § 32-1401(27)(r) ("[v]iolating a
8 formal order, probation, consent agreement or stipulation issued or entered into by the
9 board or its executive director under this chapter.").

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11 DANIEL M. MERCK, M.D.

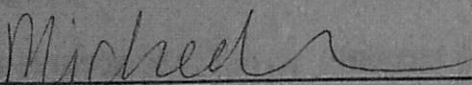
12 DATED: 9/4/18

13 EXECUTED COPY of the foregoing e-mailed
14 this 4th day of September, 2018 to:

15 Daniel M. Merck, M.D.
16 Address of Record

17 ORIGINAL of the foregoing filed
18 this 4th day of September, 2018 with:

19 Arizona Medical Board
20 1740 West Adams, Suite 4000
21 Phoenix, Arizona 85007

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23 Board staff