BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

MARI W. SCHENK, M.D.

Case No. MD-17-0886A

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR PROBATION

The Arizona Medical Board ("Board") considered this matter at its public meeting on June 12, 2018. Mari W. Schenk, M.D. ("Respondent"), appeared with legal counsel Paul Giancola, Esq. before the Board for a Formal Interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue Findings of Fact, Conclusions of Law and Order after due consideration of the facts and law applicable to this matter.

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 25685 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-17-0886A after receiving a report from the Board's Physician Health Program ("PHP") Contractor stating that Respondent had violated her Stipulated Rehabilitation Agreement ("SRA") by consuming alcohol.

4. On April 18, 2017, Respondent entered into an SRA with the Board which included a requirement that Respondent abstain from consuming alcohol and submit to random biological fluid testing.

5. On September 13, 2017, Respondent tested positive for alcohol, and admitted that she consumed alcohol in violation of her SRA. The Board's PHP Contractor opined that Respondent was not safe to practice medicine pending the completion of
either long-term residential treatment or an Intensive Diagnostic Evaluation with appropriate treatment.

6. Respondent entered into an Interim Consent Agreement for Practice Restriction, effective September 26, 2017 ("Practice Restriction").

7. On December 11, 2017, Respondent was discharged with staff approval from a Board approved residential treatment facility. The facility recommended that Respondent participate in the Board’s PHP, including recommendations regarding a gradual return to a full time work schedule.

8. Respondent met with the Board’s PHP Contractor for a post-treatment assessment, who agreed that Respondent is safe to practice medicine, provided that Respondent enter into a five (5) year Interim Consent Agreement for PHP Participation.


10. Respondent has complied with the terms and conditions of her Interim PHP Agreement.

11. During a Formal Interview on this matter, Respondent testified that at the time she consumed alcohol in violation on her SRA, she may not have completely understood the ramifications of her actions and the need for total sobriety. She stated that the treatment facility provided a rewarding experience where she was able to gain insight and develop a specific aftercare program. Respondent further testified regarding her efforts at developing a healthy work schedule and practices for stress reduction.

12. During that same Formal Interview, Board members recognized that there had been no workplace issues or patient harm involved in this matter, and commented that Respondent had taken steps to prevent any additional probation violations.
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) ("Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while practicing medicine or to the extent that judgment may be impaired and the practice of medicine detrimentally affected.").

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(s) ("Violating 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’s license is placed on Probation for Five Years¹ and is subject to her continued participation in the Board’s PHP and compliance with the following terms and conditions:

2. Respondent shall not consume alcohol or any food or other substance containing poppy seeds or alcohol.

3. Respondent shall not take any illegal drugs or mood altering medications unless prescribed for a legitimate therapeutic purpose.

4. Respondent shall continue to participate in any personalized aftercare programs or activities. Respondent shall report on those activities as requested by the PHP, including executing any releases necessary to allow the PHP to monitor his

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¹ Respondent’s participation shall be retroactive to December 15, 2017.
participation and communicate directly with and obtain records from the treating providers for those aftercare activities. Respondent shall be responsible for all costs of aftercare, including costs associated with compliance of this Board Order.

5. Respondent shall promptly obtain a Primary Care Physician ("PCP") and shall submit the name of the physician to the PHP in writing for approval. The approved 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 promptly provide a copy of this Interim Consent Agreement to the PCP.

Respondent shall also inform all other health care providers who provide medical care or treatment that Respondent is participating in PHP. “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. Respondent provides full consent for the PHP to discuss the case with the PCP or any other of Respondent’s health care providers to ensure compliance with PHP.

7. If recommended by the PHP Contractor, Respondent shall attend a relapse prevention outpatient program for a duration and frequency recommended by the PHP Contractor, unless Respondent is excused by the relapse program facilitator for good cause. The relapse prevention group facilitators shall submit monthly reports to the PHP regarding Respondent’s attendance and progress.

8. If requested by the PHP and not already completed, Respondent shall attend ninety 12-step meetings or other self-help group meetings appropriate for substance abuse and approved by the PHP, for a period of ninety days. Upon 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 PHP. Respondent shall attend a minimum of three 12-step or other self-help program
meetings per week. Two meetings per month must be Caduceus meetings. Respondent
must maintain a log of all self-help meetings.

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

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

11. Respondent shall provide the PHP 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, hair, and/or nail testing to ensure compliance with PHP. 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 PHP. Respondent shall comply with all requirements for
biological fluid, hair, and/or nail collection. Respondent shall pay for all costs for the
testing.

12. Respondent shall provide the PHP with written notice of any plans to travel
out of state.
13. Respondent shall immediately notify the Board and the PHP in writing of any change in office or home addresses and telephone numbers.

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

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

16. Respondent shall immediately provide a copy of this Order to all employers, hospitals and free standing surgery centers where Respondent currently has or in the future gains or applies for employment or privileges. Within 30 days of the date of this Order, Respondent shall provide the PHP with a signed statement of compliance with this notification requirement. 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 or applies for employment or privileges, of a chemical dependency relapse.

17. 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 quarterly reports to the PHP regarding Respondent's attendance, participation, and monitoring. The monitoring state's program
and Respondent shall immediately notify the PHP if Respondent is noncompliant with any aspect of the Order or is required to undergo any additional treatment.

18. The PHP shall immediately notify the Board if Respondent is non-compliant with any aspect of this Interim Consent Agreement or is required to undergo any additional treatment.

19. In the event of chemical dependency relapse by Respondent or Respondent’s use of drugs or alcohol in violation of this Order, Respondent shall promptly enter into an Interim Order for Practice Restriction and Consent to the Same that requires, among other things, that Respondent not practice medicine until such time as Respondent successfully completes long-term inpatient treatment for chemical dependency designated by the PHP Contractor and obtains affirmative approval from the Board or its Executive Director to return to the practice of medicine. Prior to approving Respondent’s request to return to the practice of medicine, Respondent may be required to submit to witnessed biological fluid collection or undergo any combination of physical examination, psychiatric or psychological evaluation. In no respect shall the terms of this paragraph restrict the Board’s authority to initiate and take disciplinary action for violation of this Order.

20. Respondent shall obey all state, federal and local laws, all rules governing the performance of health care tasks in Arizona, and remain in full compliance with any court order criminal probation, payments and other orders.

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

22. This Order supersedes all previous consent agreements and stipulations between the Board and/or the Executive Director and Respondent.

23. Prior to the termination of Probation, Respondent must submit a written request to the Board for release from the terms of this Order. Respondent’s request for
release will be placed on the next pending Board agenda, provided a complete submission is received by Board staff no less than 14 days prior to the Board meeting. Respondent's request for release must provide the Board with evidence establishing that he has successfully satisfied all of the terms and conditions of this Order. The Board has the sole discretion to determine whether all of the terms and conditions of this Order have been met or whether to take any other action that is consistent with its statutory and regulatory authority.

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

**RIGHT TO PETITION FOR REHEARING OR REVIEW**

Respondent is hereby notified that she has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board’s Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review 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 or review is required to preserve any rights of appeal to the Superior Court.

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

ARIZONA MEDICAL BOARD

By [Signature]
Patricia E. McSorley
Executive Director
EXECUTED COPY of the foregoing mailed this 23rd day of August, 2018 to:

Paul J. Giancola
Snell & Wilmer, LLP
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Phoenix, AZ 85004-2202
Attorney for Respondent

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

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

Mary Deiley
Board Staff