

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **ALPEN B. PATEL, M.D.**

4 Holder of License No. 47525
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-16-1353A

**AMENDED INTERIM CONSENT
AGREEMENT FOR PRACTICE
RESTRICTION**

7 **INTERIM CONSENT AGREEMENT**

8 Alpen B. Patel, M.D. ("Respondent") elects to permanently waive any right to a
9 hearing and appeal with respect to this Amended Interim Consent Agreement for Practice
10 Restriction and consents to the entry of this Order by the Arizona Medical Board ("Board").

11 **INTERIM 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 No. 47525 for the practice of allopathic
15 medicine in the State of Arizona.

16 3. The Board initiated case number MD-16-1353A after receiving a self-report
17 from Respondent, who at the time was a 5th year otolaryngology resident at a hospital,
18 disclosing an ongoing investigation by the hospital regarding his prescribing practices with
19 concern for patient care.

20 4. During the course of the investigation, Board staff obtained supporting
21 documentation from the hospital and determined that Respondent was not truthful with
22 respect to the depth of the hospital investigation. Information showed that Respondent
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1 was dismissed from the residency program at the hospital for conduct that might be
2 harmful to the health of patients.

3 5. Respondent also failed to disclose information regarding improper use of
4 controlled substances to the Board in his self-report.

5 6. On February 9, 2017, Respondent underwent a health assessment with the
6 Board's Physician Health Program ("PHP") Contractor. Based on the assessment, the
7 PHP Contractor opined that Respondent was not safe to practice medicine without
8 appropriate treatment for a substance use disorder.

9 7. On February 17, 2017, Respondent entered into an Interim Consent
10 Agreement for Practice Restriction ("First Restriction").

11 8. Respondent subsequently underwent treatment at a Board-approved facility
12 and was discharged with staff approval on April 2, 2017. Respondent met with the PHP
13 Contractor for a post-treatment assessment, and the PHP Contractor opined that
14 Respondent was safe to practice medicine provided that he enroll in and be monitored
15 through the PHP for a period of five (5) years.

16 9. On April 12, 2017, Respondent entered into an Interim Consent Agreement
17 to Participate in the PHP ("First ICA"), and on April 13, 2017, the First Restriction was
18 terminated.

19 10. On June 14, 2017, the Board received a report from the PHP Contractor
20 disclosing that a complaint was received from the treatment facility alleging that
21 Respondent wrote prescriptions for a controlled substance to a female patient ("DG") he
22 had met while undergoing treatment. The treatment facility reported that Respondent
23 prescribed oxycodone for DG, and that Respondent and DG shared the medication.
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1 11. Respondent explained to the PHP Contractor that DG sought him out
2 repeatedly and told him she needed the medication to treat her cancer. Respondent
3 denied seeking DG out, splitting the prescriptions or using the oxycodone.

4 12. Board staff obtained copies of four prescriptions written by Respondent
5 between May and June of 2017, confirming that Respondent wrote oxycodone
6 prescriptions on his urgent care script pad for DG.

7 13. On July 7, 2017, the Board received the PHP Contractor's report stating that
8 Respondent was not safe to practice until he was re-evaluated, including a medical
9 polygraph examination, and any recommended treatment is completed.

10 14. On July 10, 2017, Respondent entered into a second Interim Consent
11 Agreement for Practice Restriction ("Second Restriction").

12 15. Respondent subsequently completed an inpatient evaluation at a Board
13 approved facility on July 12-14, 2017. Based on the recommendations of the evaluators at
14 the facility, the PHP Contractor opined that Respondent was safe to practice with more
15 frequent monitoring requirements, including regular hair testing every two months for at
16 least a year; avoiding "dual relationships" with patients; and participation in a Board-
17 approved medical ethics course.

18 16. Respondent subsequently entered into an Interim Consent Agreement for
19 Participation in the Physician Health Program on August 24, 2017 ("Second ICA"), and the
20 Second Restriction was terminated.

21 17. On December 6, 2017, Board staff received a report from the PHP
22 Contractor stating that Respondent tested positive for a controlled substance on a
23 November 26, 2017 urine drug screen and a follow-up hair follicle test performed on
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1 November 28, 2017. The PHP Contractor opined that Respondent was not safe to
2 practice, due to a relapse and required long term inpatient rehabilitation prior to returning
3 to practice.

4 18. Respondent was admitted to a Board-approved inpatient treatment facility on
5 January 18, 2018 and was discharged with staff approval on March 13, 2018. The facility
6 opined that Respondent was not yet safe to return to the practice of medicine, and that
7 Respondent re-engage in monitoring through the Board's PHP. The facility opined that
8 Respondent may engage in non-medical employment as approved by the PHP until
9 completion of a re-evaluation by the facility after six months of compliance with the
10 continued care recommendations.

11 19. The aforementioned information was presented to the investigative staff, the
12 medical consultant and the lead Board member. All reviewed the information and concur
13 that an amended interim consent agreement to restrict Respondent's practice is
14 appropriate.

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16 20. The investigation into this matter is pending and will be forwarded to the
17 Board promptly upon completion for review and action.

18 **INTERIM CONCLUSIONS OF LAW**

19 1. The Board possesses jurisdiction over the subject matter hereof and over
20 Respondent.

21 2. Pursuant to A.R.S. § 32-1405(C)(25) the Executive Director has authority to
22 enter into a consent agreement when there is evidence of danger to the public health and
23 safety.
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1 6. Respondent shall promptly obtain a Primary Care Physician (“PCP”) and
2 shall submit the name of the physician to the PHP Contractor in writing for approval.
3 Except in an Emergency, Respondent shall obtain medical care and treatment only from
4 the PCP and from health care providers to whom the PCP refers Respondent. Respondent
5 shall promptly provide a copy of this Order to the PCP. Respondent shall also inform all
6 other health care providers who provide medical care or treatment that Respondent is
7 participating in the PHP. “Emergency” means a serious accident or sudden illness that, if
8 not treated immediately, may result in a long-term medical problem or loss of life.

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

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

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

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1 10. Respondent shall provide the PHP Contractor in writing with one telephone
2 number that shall be used to contact Respondent on a 24 hour per day/seven day per
3 week basis to submit to biological fluid, hair, and/or nail testing to ensure compliance with
4 the PHP. For the purposes of this section, telephonic notice shall be deemed given at the
5 time a message to appear is left at the contact telephone number provided by
6 Respondent. Respondent authorizes any person or organization conducting tests on the
7 collected samples to provide testing results to the PHP Contractor. Respondent shall
8 comply with all requirements for biological fluid, hair, and/or nail collection. Respondent
9 shall pay for all costs for the testing.

10 11. Respondent shall provide the PHP Contractor with written notice of any
11 plans to travel out of state.

12 12. If not already completed, Respondent shall successfully complete a PHP
13 approved 36 hour alcohol/drug awareness education class.

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

16 14. Respondent provides full consent for the PHP Contractor to discuss the
17 Respondent's case with the Respondent's PCP or any other health care providers to
18 ensure compliance with the PHP.

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

23 16. Respondent shall be responsible for all costs, including costs associated with
24 participating in the PHP, at the time service is rendered or within 30 days of each invoice
25 sent to the Respondent. An initial deposit of two (2) months PHP fees is due upon

1 entering the program. Failure to pay either the initial PHP deposit or monthly fees 60 days
2 after invoicing will be reported to the Board by the PHP Contractor and may result in
3 disciplinary action.

4 17. Respondent shall appear in person before with the PHP Contractor for
5 interviews upon request, upon reasonable notice.

6 18. If the PHP approves Respondent to engage in non-medical employment,
7 Respondent shall immediately provide a copy of this Amended Interim Practice Restriction
8 to that employer and provide the PHP with a signed statement of compliance with this
9 notification requirement. Respondent is further required to notify, in writing, all employers,
10 hospitals and free standing surgery centers where Respondent currently has or in the
11 future gains or applies for employment or privileges of a violation of this Amended Interim
12 Practice Restriction.

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

21 20. The PHP Contractor shall immediately notify the Board if Respondent is non-
22 compliant with any aspect of this Amended Interim Practice Restriction or is required to
23 undergo any additional treatment.

24 21. Respondent may request, in writing, release and/or modification of this
25 Amended Interim Practice Restriction. Respondent's request must be accompanied by a

1 recommendation from the PHP Contractor that Respondent has completed the facility's six
2 month re-evaluation and is safe to return to the practice of medicine. The Executive
3 Director, in consultation with and agreement of the lead Board member and the Chief
4 Medical Consultant, has the discretion to determine whether it is appropriate to release
5 Respondent from this Amended Interim Practice Restriction.

6 22. The Board retains jurisdiction and may initiate new action based upon any
7 violation of this Amended Interim Practice Restriction, including, but not limited to,
8 summarily suspending Respondent's license.

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

13 6. This Amended Interim Practice Restriction shall be effective on the date
14 signed by the Board's Executive Director.

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16 DATED this 11th day of April, 2018.

17 ARIZONA MEDICAL BOARD

18 By Patricia E. McSorley
19 Patricia E. McSorley
20 Executive Director
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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 _____
12 ALPEN B. PATEL, M.D.

DATED: 4/11/18

13
14 EXECUTED COPY of the foregoing e-mailed
15 this 11th day of April, 2018 to:

16 Alpen B. Patel, M.D.
17 Address of Record

18 ORIGINAL of the foregoing filed
19 this 11th day of April, 2018 with:

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

23 
24 _____
25 Board staff