

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of
3 **TIMOTHY C. SAPP, M.D.,**
4 Holder of License No. 30780
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No.20A-30780-MDX

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
(License Revocation)**

7 On September 3, 2020, this matter came before the Arizona Medical Board
8 ("Board") for consideration of Administrative Law Judge ("ALJ") Jenna Clark's proposed
9 Findings of Fact, Conclusions of Law and Recommended Order. Timothy C. Sapp, M.D.,
10 ("Respondent") was not present; Assistant Attorney General Anne Froedge represented
11 the State. Assistant Attorney General Elizabeth A. Campbell was available to provide
12 independent legal advice to the Board.

13 The Board, having considered the ALJ's Decision and the entire record in this
14 matter, hereby issues the following Findings of Fact, Conclusions of Law and Order.

15 **FINDINGS OF FACT**

16 **PROCEDURE**

17 1. The Board is the authority for the regulation and control of the practice of
18 allopathic medicine in the State of Arizona.

19 2. Respondent is the holder of License No. 30780 for the practice of allopathic
20 medicine in Arizona. Pursuant to ARIZ. ADMIN. CODE R4-9-117, Administrative Notice is
21 taken that Respondent was first issued his license to practice in Arizona on September 25,
22 2002.¹ Respondent's license is currently classified as Active with Restrictions.²

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24 ¹ See
25 <https://gls.azmd.gov/glsuiteweb/clients/azbom/Public/Profile.aspx?entID=1633987&licID=410990&licType=1>.

1 3. On May 05, 2020, the Board referred this matter to the Office of
2 Administrative Hearings ("OAH"), an independent state agency, for an evidentiary hearing
3 on June 12, 2020. Per the COMPLAINT AND NOTICE OF HEARING ("COMPLAINT") the issue to be
4 determined is whether the Board has cause to discipline Respondent's license, up to and
5 including revocation, pursuant to Arizona Revised Statutes ("ARIZ. REV. STAT.") § 32-1451,
6 based on alleged violations of §§ 32-1401(27)(e) and 32-1401(27)(r).

7 4. On April 20, 2020, Respondent submitted a LICENSE STATUS CHANGE
8 REQUEST FORM to the Board whereby he attempted to cancel his license pursuant to ARIZ.
9 REV. STAT. § 32-1433.³ The form, which notes in pertinent part, that the signatory affirmed
10 by signing that (1) the license is not presently under investigation by the Board, and (2) the
11 Board has not commenced any disciplinary proceedings against the license. On April 21,
12 2020, Respondent was notified that cancellation of his license was not possible because
13 there were 3 open investigations pending against his license.⁴

14 5. On April 22, 2020, the Board issued an INTERIM FINDING OF FACT,
15 CONCLUSIONS OF LAW AND ORDER FOR SUMMARY RESTRICTION OF LICENSE against
16 Respondent, which summarily restricted his license to practice allopathic medicine in the
17 State of Arizona.⁵ Specifically, Respondent was prohibited from prescribing controlled
18 substances pending the outcome of this matter.⁶

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23 ² *Id.*

³ See Confidential Board Exhibit 53.

24 ⁴ *Id.*

⁵ See Public Board Exhibit 56.

25 ⁶ *Id.*; see also <https://gls.azmd.gov/GLSuiteWeb/Repository/0/0/9/0/0f32ceef-a3fb-4649-8ffa-44b68680d1ae.pdf>.

1 **HEARING EVIDENCE**

2 6. The Board called witnesses Dr. Bhushan S. Agharkar, M.D. and Rachel
3 Shepherd to testify and submitted Exhibits 1-59 into the record.⁷ The COMPLAINT AND
4 NOTICE OF HEARING and May 29, 2020, TELEPHONIC ORDER were also admitted into the
5 record as their own exhibits. Although the Tribunal afforded Respondent a 15-minute grace
6 period, there was no appearance by or on behalf of Respondent, or a Motion to Continue
7 received by or on his behalf. The matter was heard in Respondent's absence. The
8 substantive facts of record are as follows:

9 **CASE MD-19-0184A**

10 7. Case MD-19-0184A was opened by the Board on February 19, 2019, to
11 investigate a complaint filed about prescriptions written by Respondent for Adderall
12 (dextoamphetamine – amphetamine), Klonopin (clonazepam), and Xanax (alprazolam)
13 issued to 31 year old patient ("ER") who presented to an emergency room on February 17,
14 2020, as "acutely psychotic" with "suicidal ideation."⁸ The complaint noted several
15 concerns, in pertinent parts, as follows:

- 16 a. Per Respondent's website, he practiced "medication management" but was a
17 cash only practice that did not accept health insurance;
- 18 b. Respondent's prescription of 120mg of Adderall per day to ER was double
19 the maximum recommended dose of 60mg per day;
- 20 c. Respondent's prescription of "uppers" and "downers" such as Xanax and
21 Klonopin, particularly in their high doses, is duplicative, and
- 22 d. Because of ER's history of polysubstance abuse, Respondent's prescription
23 regimen for the patient is disconcerting.
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25 ⁷ Board Exhibits 1-53 and 55 are confidential. Board Exhibits 54 and 56-59 are public.

1 8. On February 20, 2019, the Board issued a letter to Respondent to provide
2 notice of the aforementioned complaint.⁹

3 9. On March 19, 2019, the Board issued a letter to Respondent which stated, in
4 pertinent part, that Respondent had until April 02, 2019, to provide a written narrative to the
5 Board regarding his alleged violations of ARIZ. REV. STAT. §§ 32-1401.¹⁰

6 10. On April 01, 2019, the Board received Respondent's reply to the MD-19-
7 0184A investigation letter.¹¹ Respondent detailed, in pertinent parts, as follows:

- 8 a. On November 14, 2018, ER presented to Respondent's practice for a
9 psychiatric evaluation whereby he was diagnosed with Attention-Deficit
10 Hyperactivity Disorder ("ADHD") and generalized Anxiety Disorder.
- 11 b. Respondent prescribed ER 30mg Adderall (with no refills), 2mg Xanax (with 2
12 refills), and 2mg Klonopin (with 2 refills). Respondent instructed ER to return
13 for follow-up care 4-6 weeks later, or earlier if needed.
- 14 c. ER last filled Respondent's prescription for Xanax and Klonopin on January
15 13, 2019, and last filled Respondent's prescription for Adderall on February
16 02, 2019.
- 17 d. ER did not return for a follow-up appointment with Respondent.
- 18 e. Respondent denied fulling a "pill mill" and argued that he only accepted cash
19 payments as a means to work half days and have more time with his
20 patients.

21 Respondent attached his evaluation of ER, patient information form, and copy of ER's U.S.
22 Department of Veterans Affairs identification card.

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24 ⁸ See Confidential Board Exhibit 1.

25 ⁹ See Confidential Board Exhibit 2.

¹⁰ See Confidential Board Exhibit 4.

1 11. On June 19, 2019, after reviewing ER's medical and prescription records,¹²
2 the Board issued a letter to Respondent which stated, in pertinent part, that Respondent
3 had until July 03, 2019, to provide medical records and narratives for patients LB (36 year
4 old male), TC (41 year old male), and ML (25 year old male).¹³

5 12. On August 18, 2019, the Board received Respondent's response¹⁴ whereby
6 he provided the following information, in pertinent parts, about each patient requested by
7 the Board:

8 a. On October 20, 2015, LB presented to Respondent's practice for a
9 psychiatric evaluation whereby she was diagnosed with generalized Anxiety
10 Disorder, Panic Disorder, and ADHD. Respondent prescribed LB 2mg Xanax
11 (with 2 refills), 30mg Adderall, 350mg Soma, 10mg Valium and 150mg
12 Wellbutrin XL. Respondent instructed LB to return for follow-up care 6-8
13 weeks later, or earlier if needed. On September 28, 2018, Respondent
14 terminated LB's care, citing resistance to efforts to reduce LB's prescriptions.

15 b. On October 07, 2013, TC presented to Respondent's practice for a
16 psychiatric evaluation whereby he was diagnosed with generalized Anxiety
17 Disorder and prescribed 30mg Restoril (with 1 refill), 1mg Klonopin (with 1
18 refill), 400mg Neurontin, 2mg Xanax, 350mg Soma, 10mg Valium, and
19 100mg Lamictal (with 1 refill). Respondent instructed TC to return for follow-
20 up care 4 weeks later, or earlier if needed. On July 26, 2019, Respondent
21 terminated TC's care, citing TC's angry and argumentative behavior over his
22 desire to receive high dosages of benzodiazepines.

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24 ¹¹ See Confidential Board Exhibit 5.

25 ¹² See Confidential Board Exhibits 6-8.

¹³ See Confidential Board Exhibit 9.

1 c. On August 09, 2012, ML presented to Respondent's practice for a psychiatric
2 evaluation whereby he was diagnosed with generalized Anxiety Disorder and
3 Panic Disorder. Respondent prescribed ML 30mg Adderall, 2mg Klonopin,
4 10mg Valium, and 2mg Xanax. Respondent instructed ML to return for follow-
5 up care 2 weeks later, or earlier if needed.

6 13. During the course of its investigation the Board obtained medical and
7 pharmacy records for patients ER, LB, TC, and ML, and forwarded them to its medical
8 consultant ("Medical Consultant") Dr. Bhushan S. Agharkar, MD for review.¹⁵

9 14. On November 18, 2019, Medical Consultant submitted his Report and
10 Summary to the Board whereby he opined that Respondent had deviated from the
11 standard of care regarding prescriptions issued to patients ER, LB, TC, and ML without
12 adequate clinical rationale.¹⁶ Medical Consultant also opined that there was potential harm
13 to patients, especially to those at risk for misuse of controlled substances, dependence,
14 and addiction.¹⁷

15 15. On December 17, 2019, the Board issued a letter to Respondent which
16 stated, in pertinent part, that Respondent had until December 31, 2019, to respond to the
17 Board's investigative report and Medical Consultant's report.¹⁸

18 16. On December 31, 2019, the Board received Respondent's supplemental
19 response whereby Respondent argued that ER's emergency room visit had nothing to do
20 with the medication Respondent had prescribed approximately 3 months prior to the
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23 ¹⁴ See Confidential Board Exhibit 14.

24 ¹⁵ See Confidential Board Exhibits 10-15 and 17, and Public Board Exhibit 58.

25 ¹⁶ See Confidential Board Exhibit 16.

¹⁷ *Id.*

¹⁸ See Confidential Board Exhibit 18.

1 incident.¹⁹ Respondent also argued that he had not behaved unreasonably in scheduling
2 ER's follow-up appointment.

3 17. On January 05, 2020, the Board received Medical Consultant's Supplemental
4 Report and Summary.²⁰ Medical Consultant noted Respondent failed to provide an
5 explanation for his high dosage prescriptions of the underlying patients. Medical Consultant
6 also noted a lack of signed consent forms by the patients at issue, and noted that the
7 standard of care required Respondent to inform his patients each time a new medication or
8 treatment course was prescribed. Ultimately, Medical Consultant offered that his opinion(s)
9 on the case remained unchanged after reviewing Respondent's supplemental response to
10 the Board.

11 18. On April 02, 2020, the Board's Staff Investigational Review Committee
12 ("SIRC") convened to review a recommendation in Case MD-19-0184A.²¹ SIRC ultimately
13 decided to recommend the issuance of a LETTER OF REPRIMAND to Respondent, place him
14 on 5 year probation with a practice restriction, and require Respondent to complete 25
15 continuing medical education hours in prescribing and record keeping.

16 **CASE MD-19-1135A**

17 19. Case MD-19-1135A was opened by the Board on December 02, 2019, to
18 investigate a complaint filed regarding Respondent's alleged inappropriate discharge of
19 patient WF.²² The complaint noted several concerns, in pertinent parts, as follows:

- 20 a. At the time the complaint was submitted, WF was being treated for addiction
21 at an inpatient rehab facility, and
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24 ¹⁹ See Confidential Board Exhibit 19.

²⁰ See Confidential Board Exhibits 20-21.

25 ²¹ See Confidential Board Exhibit 22.

²² See Confidential Board Exhibit 23.

1 b. On October 17, 2019, WF received prescriptions written by Respondent for
2 1mg Alprazolam (with 2 refills) and D-Amphetamine.

3 c. On October 24, 2019, WF received prescriptions written by Respondent for
4 10mg Valium (with 1 refill).

5 20. On December 03, 2019, the Board issued a letter to Respondent to provide
6 notice of the aforementioned complaint.²³

7 21. During the course of its investigation the Board obtained medical and
8 pharmacy records for WF for review.²⁴

9 22. On December 20, 2019, the Board issued a letter to Respondent which
10 stated, in pertinent part, that Respondent had until January 03, 2020, to provide a written
11 narrative to the Board regarding his alleged violations of ARIZ. REV. STAT. §§ 32-1401 ²⁵

12 23. On January 28, 2020, the Board received Respondent's response²⁶ whereby
13 he provided the following information, in pertinent parts, about WF's care and treatment as
14 requested by the Board:

15 a. On July 15, 2019, WF presented to Respondent's practice for a psychiatric
16 evaluation whereby he was diagnosed with ADHD, generalized Anxiety
17 Disorder, and Bipolar Disorder. Respondent prescribed WF 30mg Adderall,
18 300mg Neurontin, and 2mg Xanax. Respondent instructed WF to return for
19 follow-up care 6-8 weeks later, or earlier if needed.

20 b. On October 15, 2019, WF presented to Respondent's practice for treatment.
21 Respondent prescribed 10mg Dexedrine, 150mg Wellbutrin XL, 400mg

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24 ²³ See Confidential Board Exhibit 24.

25 ²⁴ See Confidential Board Exhibits 26-29.

²⁵ See Confidential Board Exhibit 30.

²⁶ See Confidential Board Exhibit 31.

1 Neurontin, 1mg Xanax, and 10mg Sonata. Respondent instructed WF to
2 return for follow-up care 4 weeks later, or earlier if needed.

3 c. On December 05, 2019, WF's mother phoned Respondent to report WF's
4 history of medication abuse. As a result, Respondent cancelled WF's refills
5 and made a note to discuss with WF at his next appointment.

6 d. Respondent noted that due to WF's mother's complaint, "I most likely will not
7 be seeing this patient any longer" and that he would consider issuing a
8 termination letter to WF.

9 24. On February 10, 2020, Medical Consultant submitted his Report and
10 Summary to the Board whereby he opined that Respondent had deviated from the
11 standard of care by prescribing high dose benzodiazepines and stimulants without
12 adequate clinical rationale, and by prescribing a stimulant and antidepressant concurrently
13 in a patient with Bipolar Disorder without a mood stabilizer.²⁷ Medical Consultant also
14 opined that there was potential harm to WF because he was at risk of a "manic switch" due
15 to a lack of concurrently prescribed mood stabilizer.

16 25. On February 25, 2020, the Board issued a letter to Respondent which stated,
17 in pertinent part, that Respondent had until March 10, 2020, to respond to the Board's
18 investigative report and Medical Consultant's report.²⁸

19 26. On February 25, 2020, the Board received Respondent's supplemental
20 response whereby Respondent denied prescribing WF narcotics and argued that his notes
21 for the patient were thorough and complete.²⁹

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24 ²⁷ See Confidential Board Exhibit 32.

25 ²⁸ See Confidential Board Exhibit 33.

²⁹ See Confidential Board Exhibit 34.

1 b. Respondent had prescribed RP 4mg Clonazepam, 2mg Klonopin, 100mg
2 Lamictal, 20mg Prozac, and 0.25mg Halcion, and Gabapentin.

3 c. Respondent issued RP a termination letter stating, "I am writing this letter to
4 inform you that I will no longer be able to follow you as a patient in this clinic.
5 Because of repeated unannounced missed appointments I am forced to
6 termination you as a patient. This is stated in in the initial rules that are first
7 presented when treatment begins. I am sorry." [sic]

8 d. Respondent refused to issue RP a 30-day supply of medication while RP
9 looked for a new provider.

10 30. On December 05, 2019, the Board issued a letter to Respondent to provide
11 notice of the aforementioned complaint.³³

12 31. During the course of its investigation the Board obtained medical and
13 pharmacy records for RP for review.³⁴

14 32. On December 20, 2019, the Board issued a letter to Respondent which
15 stated, in pertinent part, that Respondent had until January 03, 2020, to provide a written
16 narrative to the Board regarding his alleged violations of ARIZ. REV. STAT. §§ 32-1401³⁵

17 33. On February 03, 2020, the Board received Respondent's response³⁶
18 whereby he provided the following information, in pertinent parts, about RP's care,
19 treatment, and discharge as requested by the Board:

20 a. RP was "obviously" terminated due to a lack of compliance with suggested
21 treatment and a great number of no shows for appointments.

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24 ³³ See Confidential Board Exhibit 38.

25 ³⁴ See Confidential Board Exhibits 42-43.

³⁵ See Confidential Board Exhibit 40.

³⁶ See Confidential Board Exhibit 44.

1 b. RP filed a complaint against Respondent "just to be contentious" because his
2 wife left him and moved out of state.

3 34. On February 14, 2020, Medical Consultant submitted his Report and
4 Summary to the Board whereby he opined that Respondent had deviated from the
5 standard of care by prescribing high dose benzodiazepines after RP missed several
6 appointments. Notably, it is unclear from Respondent's notes as to the underlying
7 reason(s) for RP's missed appointments. Medical Consultant opined that medications such
8 as Lamictal have to be re-titrated when restarted with a patient, which was not done in
9 RP's case. Medical Consultant further opined Respondent was responsible for ensuring a
10 safe and reasonable discharge plan for RP once he decide to terminate RP's care. This
11 included providing RP with the names and contact information of 3 alternative practitioners
12 RP could contact for future treatment, providing at least a 30-day supply of medication, and
13 informing RP that Respondent would make himself available for emergencies in the next
14 30 days. Medical Consultant also opined that there was actual and potential harm to RP
15 because he suffered from withdrawals and could have experienced other non-life-
16 threatening symptoms.

17 35. On February 28, 2020, the Board issued a letter to Respondent which stated,
18 in pertinent part, that Respondent had until March 13, 2020, to respond to the Board's
19 investigative report and Medical Consultant's report.³⁷

20 36. On March 13, 2020, the Board received Respondent's supplemental
21 response whereby Respondent alleged he terminated RP's treatment after 6 months had
22 passed since RP's last appointment.³⁸ Respondent also argued that the complaint was
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25 ³⁷ See Confidential Board Exhibit 46.
³⁸ See Confidential Board Exhibit 47.

1 “unfounded,” as the treatment RP had been provided was appropriate because RP’s
2 medications “had been adjusted to a point where they could be reduced.”

3 37. On March 18, 2020, the Board received Medical Consultant’s Supplemental
4 Report and Summary.³⁹ Medical Consultant noted that although RP’s last appointment with
5 Respondent was on August 09, 2019, RP filled prescriptions written by Respondent on
6 August 25, 2019, September 25, 2019, and October 23, 2019. Thus, it was more likely than
7 not that RP did in fact experience withdrawals from the medication(s). Medical Consultant
8 also noted that each of the prescriptions RP filled after his last appointment with
9 Respondent, were all based on an evaluation performed by Respondent on May 08, 2019,
10 which Medical Consultant opined to be “excessively high” amount in terms of dosage and
11 quantity.

12 38. On April 02, 2020, SIRC convened to review a recommendation in Case MD-
13 19-1143A.⁴⁰ SIRC ultimately decided to recommend the issuance of a LETTER OF
14 REPRIMAND to Respondent, place him on 5 year probation with a practice restriction, and
15 require Respondent to complete 25 continuing medical education hours in prescribing and
16 record keeping.

17 **CONSENT AGREEMENT & INVESTIGATIVE MEMO**

18 39. On April 14, 2020, the Board offered Respondent an INTERIM CONSENT
19 AGREEMENT FOR PRACTICE RESTRICTION in Cases MD-19-0184A, MD-19-1135A, and MD-
20 19-1143A.⁴¹ The Practice Restriction would prohibit Respondent from prescribing
21 benzodiazepines or stimulants while his cases were pending review, and the Consent
22 Agreement would require Respondent to obtain a proctor and transfer specific patients to
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24 ³⁹ See Confidential Board Exhibit 48.

25 ⁴⁰ See Confidential Board Exhibit 49.

⁴¹ See Confidential Board Exhibit 50.

1 other practitioners. Respondent was given until April 17, 2020, to provide the Board with
2 his response.

3 40. On April 16, 2020, Respondent provided his reply to the Board whereby he
4 declined to sign the INTERIM CONSENT AGREEMENT FOR PRACTICE RESTRICTION, as he alleged
5 that he did not have the resources required to meet the requested conditions, and could
6 not afford to lose the bulk of his patients in a mandatory transfer.⁴² Respondent closed by
7 proposing that he alternatively be permitted to continue working, and in turn promised to
8 alter, decrease, and whenever possible discontinue prescribing controlled substances.

9 41. On April 20, 2020, an INVESTIGATION MEMO was drafted regarding Cases MD-
10 19-0184A, MD-19-1135A, and MD-19-1143A.⁴³ The investigator concluded that an
11 imminent danger to the public health and safety existed relating to Respondent's
12 prescribing of controlled substances. Relying on the findings and opinions of the Medical
13 Consultant, the investigator noted that there was a lack of documentation due to
14 inadequate medical recordkeeping to support the listed psychiatric diagnoses, and no
15 discussion of potential side effects between medications or due to high dosages. Notably,
16 Respondent knew, or should have known, that the Board expected him to comply with
17 medical recordkeeping requirements and standards, because he had been issued an
18 ADVISORY LETTER on December 19, 2013, for inadequate medical records pursuant to ARIZ.
19 REV. STAT. § 32-1401(2).⁴⁴

20 **CLOSING ARGUMENTS**

21 42. In closing the Board argued that Respondent had established a pattern of
22 inappropriate behavior by prescribing dangerous controlled substances to vulnerable
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24 ⁴² See Confidential Board Exhibit 51.

25 ⁴³ See Confidential Board Exhibit 52.

⁴⁴ See Public Board Exhibit 57.

1 patients and failing to make adequate records to justify his treatments and high dosing for
2 said patients. The Board further argued that while all patients faced potential harm, there
3 were some patients who had suffered actual harm as result of Respondent's conduct. The
4 Board noted the ways and means it utilized to afford Respondent the ability to keep and
5 maintain his license, but its efforts were moot because ultimately Respondent tried to
6 cancel his license, which the Board perceived as Respondent's unwillingness to submit to
7 Board regulation.

8 CONCLUSION OF LAW

9 1. The Arizona Legislature created the Board to protect the public.⁴⁵ The Board is
10 the duly constituted authority for licensing and regulating the practice of allopathic
11 medicine. Therefore, the Board has jurisdiction over Respondent and the subject matter in
12 this case.⁴⁶ This matter has been properly brought before OAH for adjudication.⁴⁷

13 2. The NOTICE OF HEARING the Board mailed to Respondent's address of record
14 is sufficient, and Respondent is deemed to have received notice of the hearing in this
15 matter.⁴⁸ Because the Board mailed all correspondence to Respondent in the same
16 manner and failed to receive any mail returned as undeliverable, Respondent is deemed to
17 have received all correspondence regarding this matter from the Board as well.

18 3. The Board bears the burden of proof to establish cause to sanction
19 Respondent's license to practice allopathic medicine and factors in aggravation of the
20 penalty by clear and convincing evidence.⁴⁹ Respondent bears the burden to establish

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22 ⁴⁵ See Laws 1992, Ch. 316, § 10.

23 ⁴⁶ See ARIZ. REV. STAT. § 32-1401 *et seq.*

24 ⁴⁷ See ARIZ. REV. STAT. §§ 32-1101 *et seq.*, 32-1154(A), and 41-1092 *et seq.*

25 ⁴⁸ See ARIZ. REV. STAT. §§ 41-1092.04, 41-1092.05(D), and 41-1061(A); *see also* Public Board Exhibit 59

⁴⁹ See ARIZ. REV. STAT. §§ 41-1092.07(G)(2) and 32-1451.04; ARIZ. ADMIN. CODE R2-19-119(B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

1 affirmative defenses and factors in mitigation of the penalty by the same evidentiary
2 standard.⁵⁰ The standard of proof is by clear and convincing evidence. Clear and convincing
3 evidence is “[e]vidence indicating that the thing to be proved is highly probable or reasonably
4 certain.”⁵¹

5 4. ARIZ. REV. STAT. § 32-1451(D) provides that “[i]f the board finds, based on the
6 information it receives under subsections A and B of this section, that the public health,
7 safety or welfare imperatively requires emergency action, and incorporates a finding to that
8 effect in its order, the board may restrict a license or order a summary suspension of a
9 license pending proceedings for revocation or other action. If the board takes action
10 pursuant to this subsection, it shall also serve the licensee with a written notice that states
11 the charges and that the licensee is entitled to a formal hearing before the board or an
12 administrative law judge within sixty days.”

13 5. ARIZ. REV. STAT. § 32-1451(M) provides that “[a]ny doctor of medicine who
14 after a formal hearing is found by the board to be guilty of unprofessional conduct, to be
15 mentally or physically unable safely to engage in the practice of medicine or to be
16 medically incompetent is subject to censure, probation as provided in this section,
17 suspension of license or revocation of license or any combination of these, including a stay
18 of action, and for a period of time or permanently and under conditions as the board deems
19 appropriate for the protection of the public health and safety and just in the circumstance.
20 The board may charge the costs of formal hearings to the licensee who it finds to be in
21 violation of this chapter.”

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25 ⁵⁰ See ARIZ. ADMIN. CODE R2-19-119(2) and (3).

⁵¹ BLACK’S LAW DICTIONARY at 596 (8th ed. 1999).

1 6. ARIZ. REV. STAT. § 32-1451(U) provides, for the purposes of determining the
2 appropriate disciplinary action under this section, that “[t]he board shall consider all
3 previous nondisciplinary and disciplinary actions against a licensee.”

4 7. ARIZ. REV. STAT. § 32-1401(27)(e) defines “unprofessional conduct” to
5 include, “[f]ailing or refusing to maintain adequate records on a patient.”

6 8. ARIZ. REV. STAT. § 32-1401(27)(r) defines “unprofessional conduct” to include,
7 “[c]ommitting any conduct or practice that is or might be harmful or dangerous to the health
8 of the patient or the public.”

9 9. The issue in the matter at bar is whether Respondent engaged in acts of
10 unprofessional conduct, and if so, whether grounds exist for the Board to discipline
11 Respondent’s license based on said conduct.

12 10. The material facts here are not in dispute.

13 11. Here, the Board established by clear and convincing evidence that
14 Respondent’s medical records for patients ER, LB, TC, ML, WF, and RP do not support or
15 justify prescriptions Respondent issued to said patients, in violation of ARIZ. REV. STAT. §
16 32-1401(27)(e).

17 12. The Board also established by clear and convincing evidence that
18 Respondent deviated from the standard of care by writing prescriptions to patients without
19 documenting adequate clinical rationale; including documented informed consent obtained
20 by Respondent, prescribing stimulants and antidepressants concurrently without also
21 prescribing a mood stabilizer, failing to include “rule out” diagnoses in his evaluative
22 reports, in violation of ARIZ. REV. STAT. § 32-1401(27)(r).

23 13. Therefore, the sole remaining issue to be addressed is whether Respondent
24 has established one or more affirmative defenses or mitigating factors, and if so, whether
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1 those defenses or mitigating factors preclude the Board from disciplining Respondent's
2 license.

3 14. Respondent did not sustain his evidentiary burden in this matter. There is no
4 independent evidence in the record to explain or otherwise justify Respondent's prescribing
5 methodologies or clinical rationale for treatment of the underlying patients at issue.

6 15. In order to deliver effective healthcare to patients, doctors must communicate
7 effectively, accurately, and professionally with patients and other healthcare providers. It is
8 clear from a review of the record that Respondent has not consistently met these
9 rudimentary standards to practice medicine. Respondent's conduct establishes that he
10 cannot, and does not want to, be regulated at this time.

11 16. A license to practice medicine is a privilege, not a right. The Legislature has
12 charged the Board with protecting the public and those who deal with its licensed
13 practitioners. The Board has a legitimate interest in protecting the public. In light of the
14 actual harm to patients ER and RP and the risk of potential harm to other patients resulting
15 from Respondent's unprofessional conduct, the Board established cause to impose a
16 disciplinary sanction against Respondent's license.

17 17. After closely scrutinizing the relevant and substantive evidence of record, the
18 undersigned Administrative Law Judge concludes that the Board has sustained its burden
19 of proof by clear and convincing evidence in this matter. The Tribunal finds that the Board's
20 allegations of unprofessional conduct pursuant to ARIZ. REV. STAT. §§ 32-1401(27)(e) and
21 32-1401(27)(r) against Respondent have been established. Thus, grounds exist for the
22 Board to discipline Respondent's license to practice allopathic medicine in the State of
23 Arizona.

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ORDER

Based on the foregoing, it is **ORDERED** revoking Timothy C. Sapp, M.D.'s License No. 30780 for the practice of allopathic medicine in the State of Arizona. It is further ordered that Respondent be assessed the cost of the formal hearing incurred by the Board in this matter.


RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he 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 this 4th day of September 2020.

THE ARIZONA MEDICAL BOARD

By 
Patricia E. McSorley
Executive Director

1 ORIGINAL of the foregoing filed this
2 this 4th day of September, 2020 with:

3 Arizona Medical Board
4 1740 W. Adams, Suite 4000
5 Phoenix, Arizona 85007

6 COPY of the foregoing filed this
7 this 4th day of September, 2020 with:

8 Greg Hanchett, Director
9 Office of Administrative Hearings
10 1740 W. Adams
11 Phoenix, AZ 85007

12 Executed copies of the foregoing
13 mailed by U.S. Mail and emailed this
14 this 4th day of September, 2020 to:

15 Timothy C. Sapp, M.D.
16 Address of Record
17 Respondent

18 Anne Froedge
19 Assistant Attorney General
20 Office of the Attorney General
21 SGD/LES
22 2005 N. Central Avenue
23 Phoenix, AZ 85004

24 Michelle Robles
25 # 8888357