BEFORE THE ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

in the Matter of:

KERRY D. MALIN, P.A.

Holder of License No. 5167 For the Performance of Healthcare Tasks In the State of Arizona

Case No. PA-19-0047A

ORDER FOR DECREE OF CENSURE AND PROBATION; AND CONSENT TO SAME

Kerry D. Malin, P.A. ("Respondent"), elects to permanently waive any right to a hearing and appeal with respect to this Order for Decree of Censure and Probation; admits the jurisdiction of the Arizona Regulatory Board of Physician Assistants ("Board"); and consents to the entry of this Order by the Board.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of physician assistants in the State of Arizona.

2. Respondent is the holder of license number 5167 for the performance of health care tasks in the State of Arizona.

3. The Board initiated case number PA-19-0047A after receiving a complaint regarding Respondent's care and treatment of a 73 year-old female patient ("MR") alleging inappropriate prescribing.

 MR initiated care with Respondent in July 2016. MR had a past medical history of chronic pain from Lumbar degenerative disc disease ("DDD"), generalized osteoarthritis ("OA") status-post right total hip arthroplasty ("THA"), hereditary and idiopathic neuropathy, major depressive disorder, chronic kidney disease stage 3, generalized edema, hypertension, and anemia. Respondent initially prescribed MR ibuprofen 800mg twice daily, gabapentin 600mg two capsules three times a day. Respondent also prescribed MR fentanyl 100mcg patch every 48 hours.

5. On May 29, 2018, MR presented to Respondent's office with a chief complaint of chronic pain from OA and DDD. Respondent noted that MR reported changing fentanyl patches every 48 hours instead of package insert dosing interval of 72 hours. Respondent documented MR's explanation that the patches were falling off due to sweating and oily skin. Respondent noted that the plan was to refer to pain management 6 for medication management and evaluation.

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7 6. MR subsequently referred to a pain management facility, resulting in 8 decreased fentanyl prescriptions and substitution with tizanidine 4 mg, three times daily.

9 7. On January 24, 2019, Respondent saw MR and noted that she was stable 10 on her fentanyl patches with a pain level of 6/10. MR was referred to a second pain 11 management practice, where MR received prescriptions for oxycodone 15 mg.

12 8. On March 18, 2019, Respondent documented that MR was upset and 13 complaining about pain management. Respondent also documented that MR was stable 14 on her fentanyl patches with pain level of 6/10. On March 21, 2019 MR reported losing 15 her pills after spilling them down the drain. Respondent obtained authorization for a five 16 day supply of oxycodone from MR's second pain management provider. On March 25, 17 2019, MR reported pain of 10/10, and pins and needles sensation over her body. MR 18 admitted to taking more medication than supplied. Respondent documented a plan to 19 contact the first pain management facility to request restarting of fentanyl.

20 9. On April 18, 2019, MR was seen by the first pain management facility for 21 cervical dystonia. The facility providers reviewed MR's controlled substance prescription 22 monitoring profile ("CSPMP") and noted the prescriptions for oxycodone provided by the 23 second pain management provider. MR denied taking oxycodone, but her urine drug 24 screen was positive for it. The first pain management facility refused to prescribe 25 medication to MR due to the aberrancy.

10. On May 2, 2019, Respondent documented MR's report that her pain was unbearable at 10/10. MR reported reading in a chair a lot and stated that physical therapy 3 has helped. MR brought a letter from the Governor stating that she should not have been 4 weaned from narcotics. MR also reported that YRMC restarted the fentanyl, which was 5 untrue. MR continued to receive oxycodone 90 morphine milligram equivalent (MME) daily 6 from the second pain management provider.

7 11. On May 22, 2019, MR reported to Respondent that her pain was unbearable 8 and that out of a 30 day prescription of oxycodone, she was out of medication after 16 9 days. Respondent resumed pain medications, prescribing oxycodone 10mg every four 10 hours daily (maximum of 5 tablets) and fentanyl 25mcg every 72 hours for a total of 135 11 MMEs.

12. 12 On June 13, 2019, MR reported that her pain was still 10/10 and unbearable. 13 Respondent provided MR an early refill of her pain medications.

14 13. On June 16, 2019, Respondent noted that the second pain management 15 provider was no longer willing to prescribe MR pain medication. Respondent also noted 16 that per his supervising physician, he was not to prescribe more than 90MMEs. 17 Respondent prescribed MR fentanyl 25 mcg patch, decreased MR's oxycodone 10mg to 18 twice daily for an MME of 90, and prescribed Narcan.

19 14. The standard of care prohibits a PA from prescribing high dose opioids 20 without clinical justification. Respondent deviated from the standard of care by prescribing 21 high dose opioids to MR without clinical justification.

22 15. The standard of care requires a PA to address a patient's aberrant 23 behaviors. Respondent deviated from the standard of care by failing to adequately 24 respond to MR's aberrant behaviors.

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16. The standard of care requires a PA to monitor patient compliance by checking and documenting urinary drug screens results. Respondent deviated from the standard of care by failing to monitor patient compliance by checking and documenting urinary drug screens results.

5 17. There was actual patient harm in that MR experienced insufficiently treated 6 pain, and developed opioid use disorder. There was potential for patient harm in that MR 7 was at risk of overdose, depression, opioid induced hypogonadism, opioid-induced 8 hyperalgesia, worsening function, and death.

9 18. In PA-17-0054A, the Board issued a Letter of Reprimand and Probation and 10 Consent to Same ("First Order") arising out of a complaint alleging inappropriate 11 prescribing of opioid medication. The First Order included a Practice Restriction that 12 prohibited Respondent from prescribing controlled substances pending completion of 13 intensive, in-person continuing medical education ("CME") in controlled substance 14 prescribing and enrolled with a Board approved monitoring company to perform periodic 15 chart reviews. Respondent completed the CME required by the First Order on January 16 14-16, 2019. The First Order was terminated on May 28, 2020 after Respondent 17 completed two consecutive, favorable chart reviews.

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CONCLUSIONS OF LAW

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. § 32-2501(18)(j) ("Committing any conduct or practice that is
 or might be harmful or dangerous to the health of a patient or the public.").

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3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-2501(18)(p) ("Failing or refusing to maintain adequate records on a patient.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Decree of Censure;

2. Respondent is placed on Probation for a period of two years with the following terms and conditions:

Enhanced Physician Supervision а.

Within 10 days of the date of this Order or prior to performing healthcare tasks for any subsequent Supervising Physician, Respondent shall provide a written affirmation from his Supervising Physician that the Supervising Physician has reviewed this Order and agrees to provide enhanced supervision in accordance with its requirements.

Respondent's Supervising Physician shall provide concurrent review of all of Respondent's controlled substance prescribing and submit monthly reports to the Board regarding Respondent's compliance with the controlled substance prescribing guidelines, and safety to practice. The Supervising Physician shall notify the Board immediately in the event that he determines that Respondent is unsafe to perform healthcare tasks.

b. **Probation Termination**

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 30 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, including a statement from his

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Supervising Physician supporting probation termination. 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.

Obey All Laws

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Respondent shall obey all state, federal and local laws, and all rules governing the performance of healthcare tasks in Arizona.

3. The Board retains jurisdiction and may initiate new action against Respondent based upon any violation of this Order. A.R.S. § 32-2501(18)(ee).

DATED AND EFFECTIVE this 29th day of February, 2024.

ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

Patrice C. We Sa ley By

Patricia E. McSorley Executive Director

CONSENT TO ENTRY OF ORDER

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

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

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

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

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5. All admissions made by Respondent in this Order are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by Respondent are not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or any other state or federal court.

9 Notwithstanding any language in this Order, this Order does not preclude in 6. 10 any way any other State agency or officer or political subdivision of this state from 11 instituting proceedings, investigating claims, or taking legal action as may be appropriate 12 now or in the future relating to this matter or other matters concerning Respondent, 13 including but not limited to, violations of Arizona's Consumer Fraud Act. Respondent acknowledges that, other than with respect to the Board, this Order makes no 14 15 representations, implied or otherwise, about the views or intended actions of any other 16 state agency or officer or political subdivisions of the State relating to this matter or other 17 matters concerning Respondent.

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

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

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

3 10. If the Board does not adopt this Order, Respondent will not assert as a
4 defense that the Board's consideration of the Order constitutes bias, prejudice,
5 prejudgment or other similar defense.

Any violation of this Order constitutes unprofessional conduct and may result
in disciplinary action. A.R.S. § § 32-2501(18)(ee) ("Violating a formal order, probation
agreement or stipulation issued or entered into by the board or its executive director.") and
32-2551.

12.

Respondent has read and understands the terms of this Agreement.

Mul___ KERRY D. MALIN, P.A.

DATED: 12/13/23

1	EXECUTED COPY of the foregoing mailed
2	this 29th day of February, 2024 to:
3	Kerry D. Malin, P.A.
4	Address of Record
5	ORIGINAL of the foregoing filed this 29th day of February, 2024 with:
6	Arizona Regulatory Board
7	of Physician Assistants 1740 West Adams, Suite 4000
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9	MichelleRebes
10	Board staff
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