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# BEFORE THE ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

In the Matter of:

**NOLAN W. MARCOS, P.A.** 

Applicant for License No. 6880 For the Performance of Healthcare Tasks In the State of Arizona Case No. PA-20-0021A, PA-20-0022A, PA-22-0084A

ORDER FOR LETTER OF REPRIMAND AND PROBATIONARY LICENSE WITH PRACTICE RESTRICTION; AND CONSENT TO SAME

Nolan W. Marcos, P.A. ("Respondent"), elects to permanently waive any right to a hearing and appeal with respect to this Order for Letter of Reprimand and Probationary License with Practice Restriction; 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. The Board initiated case PA-22-0084A after receiving Respondent's application for License No. 6880 in the State of Arizona.

#### PA-20-0021A

- 3. The Board initiated case number PA-20-0021A after receiving a complaint regarding PA Marcos' care and treatment of a 35 year-old female patient ("Patient 1") alleging inappropriate boundaries, and inappropriate prescribing of controlled substances.
- 4. Based on the allegations in the complaint, Board staff requested Medical Consult ("MC") review of Respondent's care and treatment of Patient 1, who established care with Respondent at the Behavioral Health Clinic ("BHC 1") in September, 2019 to address mental health and alcohol use disorder concerns, including post-traumatic stress disorder ("PTSD") subsequent to childhood molestation. Patient 1 had a history of prior suicide attempts and had been experiencing suicidal thoughts.

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- 5. During an interview with Board staff, Patient 1 alleged that Respondent engaged in multiple verbally abusive and sexually explicit conversations with her, both during appointments and by phone. Respondent denied the allegations made by Patient 1.
- 6. Respondent initially saw Patient 1 on September 25, 2019 for a comprehensive new patient visit. Respondent documented a principal treating diagnosis of PTSD, borderline personality disorder, alcohol dependence, and problems related to the social environment. Respondent additionally identified a target symptom of mood lability. Patient 1 requested to restart Vyvanse that had previously been prescribed by another provider, but Respondent declined to prescribe it at that time due to the recency of Patient 1's sobriety.
- 7. Respondent saw Patient 1 again on October 2, 2019. Respondent prescribed Vyvanse 30 mg daily for depression, concentration and eating concerns. Respondent identified concentration and depressed mood as target symptoms.
- 8. Patient 1 was discharged from BHC 1's residential program on October 15, 2019 and returned for an outpatient visit with Respondent on October 30, 2019. Respondent increased Patient 1's Vyvanse prescription to 40 mg daily for periods of inattention.
- 9. Respondent again increased Patient 1's dose of Vyvanse on November 27, 2019 by giving Patient 1 prescriptions for both 40 mg and 10 mg to address inattention. In the November 27, 2019 progress note, Respondent identified Patient 1's target symptoms as anxiety, concentration, and depressed mood liability.
- 10. Respondent saw Patient 1 again on December 18, 2019, maintained the current dose of Vyvanse, and identified a target symptom of concentration.

- 11. On January 15, 2020, Respondent documented that Patient 1 was smoking marijuana and had over four sexual partners since her last visit. Respondent increased her Vyvanse to 50 mg daily. Respondent refilled Patient 1's prescription for Vyvanse 50 mg on February 19, 2020.
- 12. On March 11, 2020, Respondent documented a plan to transfer Patient 1 to a female provider, noting that Patient 1 had demonstrated sexual forwardness and had asked him "again" for sex. Respondent emailed BHC 1 with the transfer request. Respondent subsequently documented a call to Patient 1 for a medication question.
- 13. On March 20, 2020 Respondent issued a prescription to Patient 1 for Vyvanse 60 mg daily.
- 14. During an interview with Board staff, Respondent asserted that he contacted Patient 1 after becoming aware of a recent suicide attempt and called to check on her. Respondent denied the allegations of sexual misconduct made by Patient 1 during her interview.
- 15. The standard of care for a physician assistant treating patients for psychiatric illness is to prescribe medications considered safe and effective for the conditions with which a patient has been diagnosed. Respondent deviated from this standard of care by continuing to prescribe Vyvanse to Patient 1 despite her decreasing impulse control.
- 16. There was actual patient harm in that Patient 1's condition deteriorated.

  There was potential for patient harm in that Patient 1 was at risk of overdose and death.
- 17. Respondent's employee file for BHC 1 included complaints from co-workers regarding alleged use of inappropriate workplace language.

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PA-20-0022A

- 18. The Board initiated case number PA-20-0022A after receiving a complaint from a second Behavioral Health Center ("BHC 2") reporting that three patients reported concerns of sexual misconduct regrading Respondent.
- 19. Based on the allegations in the complaint, Board staff requested MC review of Respondent's care and treatment of Patients 2, 3 and 4. The MC identified quality of care concerns regarding Patients 3 and 4, and documentation deficiencies regarding all three patients reviewed under this case number.
- 20. Patient 2 established care in the methadone program of the Behavioral Health Center in 2016 to treat opioid use disorder. On August 2, 2018, Patient 2 saw Respondent for a psychiatric evaluation. Respondent documented that Patient 2 requested benzodiazepines for anxiety. Respondent documented that Patient 2 left abruptly after he declined to issue her a prescription. On August 8, 2018, a BHC 2 employee filed an incident report indicating that Patient 2 complained that Respondent made inappropriate physical contact during the evaluation.
- 21. Patient 3 established care with Respondent in December 2018 for treatment of anxiety, depression and opioid dependence. Respondent prescribed Patient 3 medications including hydroxyzine to 100mg four times a day, alprazolam 0.25mg daily, clonidine 0.3mg twice daily, and methadone 55mg daily.
- 22. Patient 4 established care with Respondent in January, 2018 to address depression, anxiety and opioid abuse. Respondent prescribed Patient 4 medications including lamotrigine 50mg daily, methadone 130mg daily, gabapentin 30mg three times daily, clonidine 0.3mg four times daily, and venlafaxine 150mg daily. On February 26, 2019, Respondent documented that Patient 4 reported four seizures in the previous two weeks and noted that she had a history of seizures.

- 23. The MC who reviewed Respondent's care and treatment of Patients 2, 3 and 4 opined that Respondent deviated from the standard of care by failing to monitor and control his prescribing of controlled substances to Patient 3, who may have been actively abusing alcohol, prescribing medications to Patient 4 without documentation, failing to write encounter notes for some of his treatment of Patient 3 and 4, and writing late notes for other encounters with Patients 3 and 4. The MC did not identify any deviations in Respondent's care of Patient 2.
- 24. Respondent was terminated from BHC 2 as a result of ongoing personnel issues and allegations of misconduct during treatment.
- 25. In an interview with Board staff, Respondent denied all allegations of sexual misconduct.

### **Procedural History**

- 26. Effective October 16, 2020 Respondent entered into an Interim Consent Agreement for Practice Restriction ("Practice Restriction").
- 27. On January 14, 2021 Respondent underwent a psychosexual evaluation with a Board-approved Facility. In its report, the Facility noted that while Respondent denied inappropriate sexual contact with patients as alleged, he admitted to exhibiting poor boundaries with a vulnerable patient population. In its report, the Facility noted that Respondent appeared to demonstrate a lack of insight and minimization of inappropriate boundaries. Based on the evaluation's findings and results, the Facility recommended that Respondent be restricted from treating female patients without a chaperone, engage in treatment with qualified heath care provider ("Treating Provider"), establish a relapse prevention plan, and complete training in ethics, boundaries, trauma and sexual abuse.
- 28. Respondent subsequently completed 63 hours of Continuing Medical Education ("CME") in relevant topics, including an intensive, virtual Medical Ethics and

Professionalism course with a Board approved provider, and additional CME In boundaries, ethics, as well as controlled substance and opioid prescribing. Respondent also completed sexual harassment prevention training.

- 29. Respondent additionally engaged in treatment with a Board approved provider to address medical conditions as recommended by the Facility in its report, and provided Board staff with a copy of his relapse prevention plan.
- 30. Effective December 22, 2021, the Practice Restriction was amended to allow Respondent to treat female patients with the presence of a chaperone ("Amended Practice Restriction").
- 31. On March 26, 2022, Respondent underwent a psychosexual re-evaluation with the Facility. The Facility opined that Respondent was able to demonstrate the knowledge he had gained through therapy and education, and had provided an adequate relapse prevention plan that should assist him in maintaining proper boundaries with patients and co-workers. The Facility further recommended ongoing treatment with appropriate medical providers, and recommended that Respondent should be otherwise safe to return to the performance of healthcare tasks.
- 32. Respondent is in compliance with the terms of the Amended Practice Restriction; however, Respondent's practice has not included treatment of adult female patients and Respondent's license lapsed on January 17, 2021 due to non-renewal.

### **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:

- Respondent is issued a Letter of Reprimand; 1.
- 2. Respondent's application for licensure is granted and placed on Probation for a period of 1 year with the following terms and conditions:

#### a. **Practice Restriction**

Respondent's performance of healthcare tasks is restricted in that Respondent shall have a female chaperone present while examining or treating all female patients in all settings, including but not limited to the office, hospital, and clinic. The female chaperone must be an Arizona licensed healthcare provider or allied health professional (i.e. registered nurse, licensed practical nurse, physician assistant, or certified medical assistant) employed by the Respondent, hospital or clinic and may not be a representative or relative who accompanied the patient. Respondent shall instruct the female chaperone to document her presence by signing, dating, and legibly printing her name on each patient's chart at the time of the examination. Respondent shall instruct the female chaperone to immediately report any inappropriate behavior to Respondent and the Board. After six months, Respondent may request, in writing, release from this Practice Restriction. The Executive Director has the discretion to determine whether it is appropriate to grant Respondent's request.

#### b. Continuing Medical Education

Respondent shall within 6 months of the effective date of this Order obtain no less than 6 hours of Board staff pre-approved Category I Continuing Medical Education

("CME") in an intensive, in-person course in medical recordkeeping. Respondent shall within thirty days of the effective date of this Order submit his request for CME to the Board for pre-approval. Upon completion of the CME, Respondent shall provide Board staff with satisfactory proof of attendance. The CME hours shall be in addition to the hours required for the biennial renewal of licensure.

### c. Treatment

Respondent shall continue treatment with his current Treating Provider as recommended by the Facility and shall comply with any and all treatment recommendations, including taking any and all prescribed medications. Respondent shall instruct the Treating Provider to submit quarterly written reports to the Board regarding diagnosis, prognosis, current medications, recommendations for continuing care and treatment, and ability to safely perform healthcare tasks. The reports shall be submitted quarterly to the Board. Respondent shall provide the Treating Provider with a copy of this Order. Respondent shall pay the expenses for treatment and be responsible for paying for the preparation of the quarterly reports.

### d. **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. 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.

### e. Obey All Laws

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 22 day of February, 2023.

ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

By Kill 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.
- 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.

- 6. Notwithstanding any language in this Order, this Order does not preclude in any way any other State agency or officer or political subdivision of this state from instituting proceedings, investigating claims, or taking legal action as may be appropriate now or in the future relating to this matter or other matters concerning Respondent, 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 representations, implied or otherwise, about the views or intended actions of any other state agency or officer or political subdivisions of the State relating to this matter or other matters concerning Respondent.
- 7. Upon signing this agreement, and returning this document (or a copy thereof) to the Board's Executive Director, Respondent may not revoke the consent to the entry of the Order. Respondent may not make any modifications to the document. Any modifications to this original document are ineffective and void unless mutually approved 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.

1	10. If the Board does not adopt this Order, Respondent will not assert as a
2	defense that the Board's consideration of the Order constitutes bias, prejudice,
3	prejudgment or other similar defense.
4	11. Any violation of this Order constitutes unprofessional conduct and may result
5	in disciplinary action. A.R.S. § § 32-2501(18)(ee) ("Violating a formal order, probation
6	agreement or stipulation issued or entered into by the board or its executive director.") and
7	32-2551.
8	12. Respondent has read and understands the terms of this Agreement.
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10	DATED:2/20/23
11	NOLAN W. MARCOS, PA-C
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13	EXECUTED COPY of the foregoing mailed this <u>יולי</u> מאַן מאַן לאַט of <u>אָלי) אוויי</u> 2023 to:
14	Nolan W. Marcos
15	Address of Record
16	Sara Stark, Esq. Chelle Law
17	11811 North Tatum Boulevard, Suite 3031 Phoenix, Arizona 85028
18	Attorney for Respondent
19	ORIGINAL of the foregoing filed
20	this 110 day of MMUN 2023 with:
21	Arizona Regulatory Board of Physician Assistants
22	1740 West Adams, Suite 4000 Phoenix, Arizona 85007
23	
24	Board staff
25	Dualu Stati