

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of
3 **MITCHELL C. KAYE, M.D.**
4 Holder of License No. 25021
5 For the Practice of Allopathic Medicine
6 In the State of Arizona

Case No. MD-22-0427A

ORDER DENYING PETITION FOR REHEARING

7 At its public meeting on February 6, 2024 the Arizona Medical Board ("Board")
8 considered Mitchell C. Kaye, M.D.'s ("Respondent") Petition for Rehearing of the Board's
9 Order dated December 11, 2023 in the above referenced matter. Respondent was
10 represented by his counsel, Andrew Plattner, Esq. Board members noted that the
11 Committee who considered Respondent's formal interview reviewed voluminous evidence
12 and had a robust discussion regarding the appropriate outcome for the case. Board
13 members agreed that Respondent failed to establish that any the criteria for rehearing or
14 review required pursuant to A.A.C.R4-16-103(D). After considering all of the evidence
15 and arguments of counsel, the Board voted to deny Respondent's Petition for Rehearing.

ORDER

16 IT IS HEREBY ORDERED that:

17 Respondent's Petition for Rehearing is denied. The Board's December 11, 2023
18 Findings of Fact, Conclusions of Law and Order for Letter of Reprimand and Probation in
19 Case MD-22-0427A is effective and constitutes the Board's final administrative order.
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1 **RIGHT TO APPEAL TO SUPERIOR COURT**

2 Respondent is hereby notified that he has exhausted his administrative remedies.
3 Respondent is advised that an appeal to Superior Court in Maricopa County may be taken
4 from this decision pursuant to title 12, chapter 7, and article 6 of the Arizona Revised
5 Statutes.

6 DATED AND EFFECTIVE this 13th day of February, 2024.

7 ARIZONA MEDICAL BOARD

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10 By Pat E McSorley
11 Patricia E. McSorley
12 Executive Director

13 EXECUTED COPY of the foregoing mailed via Certified Mail
14 this 13th day of February, 2024 to:

15 Mitchell C. Kaye, M.D.
16 Address of Record

17 Andrew Plattner, Esq.
18 ALP Law, PLC
19 9141 East Hidden Spur Trail, Suite 101
20 Scottsdale, Arizona 85255
21 Attorney for Respondent

22 ORIGINAL of the foregoing filed
23 this 13th day of February, 2024 with:

24 Arizona Medical Board
25 1740 West Adams, Suite 4000
Phoenix, Arizona 85007

Michelle Reddes
Board staff

1 **BEFORE THE REVIEW COMMITTEE OF THE ARIZONA MEDICAL BOARD**

2 In the Matter of

Case No. MD-22-0427A

3 **MITCHELL C. KAYE, M.D.**

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR LETTER
OF REPRIMAND AND PROBATION**

4 Holder of License No. 25021
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

7 The Review Committee of the Arizona Medical Board (“Board”) considered this
8 matter at its public meeting on October 6, 2023. Mitchell C. Kaye, M.D. (“Respondent”),
9 appeared with legal counsel, Andrew Plattner, Esq., before the Review Committee for a
10 Formal Interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(P).
11 The Review Committee voted to issue Findings of Fact, Conclusions of Law and Order
12 after due consideration of the facts and law applicable to this matter.

13 **FINDINGS OF FACT**

14 1. The Board is the duly constituted authority for the regulation and control of
15 the practice of allopathic medicine in the State of Arizona.

16 2. Respondent is the holder of license number 25021 for the practice of
17 allopathic medicine in the State of Arizona.

18 3. The Board initiated case number MD-22-0427A after receiving a complaint
19 from a Hospital nurse (“YD”) alleging that Respondent verbally and physically assaulted
20 her in an operating room, and exhibited unprofessional behavior towards other staff.

21 4. On April 25, 2022, Respondent was scheduled to complete a urethral
22 diverticulectomy procedure in the Hospital’s main operating room. After entering the
23 operating room, Respondent became verbally aggressive with OR staff. Staff members
24 reported to the Hospital that Respondent used inappropriate language towards YD and
25 other staff, threw sterile equipment on the floor requiring staff to get new equipment, and
that Respondent grabbed YD’s arm and pushed her into a prep stand. Staff members

1 reported they did not respond to Respondent's behavior at the time out of concern that it
2 would cause him to escalate and further impact patient safety.

3 5. Respondent's Hospital employment records included complaints filed by his
4 co-workers regarding his conduct. In 2017, Respondent was asked by the Hospital to
5 register for an anger management course, seek counseling assistance, attend a team
6 building session, and sign and date an acknowledgement of the Hospital's code of conduct
7 conditions.

8 6. On July 13, 2022, Respondent signed a Personal Code of Conduct from the
9 Hospital which required that he enroll in the Physicians Universal Leadership Skills
10 Education (P.U.L.S.E.) 360 Intensive Program. After completing the initial assessment with
11 P.U.L.S.E., Respondent would be required to participate in monthly monitoring sessions
12 with individuals designated by the PPEC for 12 months.

13 7. The Hospital reported to the Board that Respondent's participation in the
14 Program is ongoing.

15 8. During a Formal Interview on this matter, Respondent stated that he was a
16 dedicated and caring physician but recognized that his direct manner was problematic and
17 that his participation in the P.U.L.S.E. program was helpful and that he had recently gotten
18 hearing aids to assist controlling his vocal tone and volume.

19 9. Respondent testified regarding the April 25, 2022 incident. Respondent
20 stated that the OR team he had been assigned had improperly prepped and draped the
21 patient and had not gathered the necessary surgical instruments yet. Respondent stated
22 that while he was attempting to reposition the patient, Nurse YD approached with a cardiac
23 monitoring catheter. Respondent stated that in a split second decision, he grabbed the
24 catheter and tubing; pulling it away from the patient in order to avoid contaminating the
25 surgical field. Respondent denied touching YD at any time.

1 10. Respondent stated that he did express displeasure to the OR supervisor, but
2 denied yelling, stating that he has a naturally gruff voice. Respondent stated that he was
3 unhappy with the nurse anesthetist's patient interaction in the pre-operative area because
4 Respondent felt the nurse anesthetist's statements had caused an already nervous patient
5 consider cancelling the surgery. Respondent denied that any surgical instruments fell to
6 the floor, but did note that he was missing required surgical instruments that should have
7 been placed by staff. Respondent stated that he did not consider cancelling the procedure
8 because the patient was already asleep and while it was a potentially technically
9 challenging procedure, he did not require much assistance to complete it.

10 11. Respondent stated that he understood the role physicians play in terms of
11 ensuring patient safety and being team leaders. Respondent testified that he felt the
12 Hospital discipline process was unfair, but that he is actively participating in the P.U.L.S.E.
13 program because he sees it as a way to improve his interactions with people. Respondent
14 testified regarding what he has learned during the P.U.L.S.E. Program.

15 12. Respondent stated that once the OR Supervisor was in the room, the
16 procedure proceeded well with no issues from his own perspective.

17 13. During that same Formal Interview, Review Committee members
18 commented that violations of A.R.S. §§ 32-1401(27)(r) and (jj) were established based on
19 Respondent's verbal conduct with Hospital staff. Committee members noted that
20 disrespectful communication has the potential to negatively impact patient care due to the
21 impact on staff morale. Committee members expressed concern that Respondent had
22 displayed a lack of insight during the interview and agreed that probation was warranted to
23 ensure that Respondent continued to engage in remediation and mentoring to improve his
24 communication patterns.

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1 **CONCLUSIONS OF LAW**

2 1. The Board possesses jurisdiction over the subject matter hereof and over
3 Respondent.

4 2. The conduct and circumstances described above constitute unprofessional
5 conduct pursuant to A.R.S. § 32-1401(27)(r) ("Committing any conduct or practice that is
6 or might be harmful or dangerous to the health of the patient or the public.").

7 3. The conduct and circumstances described above constitute unprofessional
8 conduct pursuant to A.R.S. § 32-1401(27)(jj) ("Exhibiting a lack of or inappropriate
9 direction, collaboration or direct supervision of a medical assistant or a licensed, certified
10 or registered health care provider employed by, supervised by or assigned to the
11 physician.").

12 **ORDER**

13 IT IS HEREBY ORDERED THAT:

- 14 1. Respondent is issued a Letter of Reprimand.
15 2. Respondent is placed on Probation for a period of 1 year with the following terms
16 and conditions:

17 **a. P.U.L.S.E. 360 Intensive Program**

18 Respondent shall continue to participate in the P.U.L.S.E. Program and
19 successfully complete it. Respondent shall comply with all recommendations from the
20 Program. Respondent shall promptly provide Board staff with satisfactory proof of
21 completion.

22 **b. Continuing Medical Education**

23 Respondent shall within 6 months of the effective date of this Order, complete the
24 Improving Inter-Professional Communication course offered by Center for Personalized
25 Education for Physicians ("CPEP"). Respondent shall, within **thirty days** of the effective

1 date of this Order, submit satisfactory proof of enrollment with Board staff. Upon
2 completion of the CME, Respondent shall provide Board staff with satisfactory proof of
3 attendance. The CME hours shall be in addition to the hours required for the biennial
4 renewal of medical licensure.

5 **c. Obey All Laws**

6 Respondent shall obey all state, federal and local laws, all rules governing the
7 practice of medicine in Arizona, and remain in full compliance with any court ordered
8 criminal probation, payments and other orders.

9 **d. Tolling**

10 In the event Respondent should leave Arizona to reside or practice outside the
11 State or for any reason should Respondent stop practicing medicine in Arizona,
12 Respondent shall notify the Executive Director in writing within ten days of departure and
13 return or the dates of non-practice within Arizona. Non-practice is defined as any period of
14 time exceeding thirty days during which Respondent is not engaging in the practice of
15 medicine. Periods of temporary or permanent residence or practice outside Arizona or of
16 non-practice within Arizona, will not apply to the reduction of the probationary period.

17 **e. Probation Termination**

18 Prior to the termination of Probation, Respondent must submit a written request to the
19 Board for release from the terms of this Order. Respondent's request for release will be
20 placed on the next pending Board agenda, provided a complete submission is received by
21 Board staff no less than 30 days prior to the Board meeting. Respondent's request for
22 release must provide the Board with evidence establishing that he has successfully
23 satisfied all of the terms and conditions of this Order. The Board has the sole discretion to
24 determine whether all of the terms and conditions of this Order have been met or whether
25 to take any other action that is consistent with its statutory and regulatory authority.

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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 AND EFFECTIVE this 11th day of December, 2023.

ARIZONA MEDICAL BOARD

By Pat E McSorley
Patricia E. McSorley
Executive Director

EXECUTED COPY of the foregoing mailed this 11th day of December, 2023 to:

- Mitchell C. Kaye, M.D.
Address of Record
- Andrew Plattner, Esq.
ALP Law, PLC
9141 East Hidden Spur Trail, Suite 101
Scottsdale, Arizona 85255
Attorney for Respondent

ORIGINAL of the foregoing filed this 11th day of December, 2023 with:

1 Arizona Medical Board
2 1740 West Adams, Suite 4000
3 Phoenix, Arizona 85007

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Board staff

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