

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **COLE J. MCEWEN, M.D.**

4 Holder of License No. 55831  
5 For the Practice of Allopathic Medicine  
6 In the State of Arizona.

Case No. MD-22-0052A

**ORDER FOR LETTER OF REPRIMAND  
AND PROBATION; AND CONSENT TO  
THE SAME**

7 Cole J. McEwen, M.D. ("Respondent") elects to permanently waive any right to a  
8 hearing and appeal with respect to this Order for Letter of Reprimand and Probation;  
9 admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of  
10 this Order by the Board.

11 **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 number 55831 for the practice of  
15 allopathic medicine in the State of Arizona.

16 3. The Board initiated case number MD-22-0052A after receiving notification  
17 from the Board's Physician Health Program ("PHP") Contractor that Respondent tested  
18 positive for an illicit substance in violation of his confidential agreement for monitoring.

19 4. Effective September 21, 2021, Respondent entered into a Stipulated  
20 Rehabilitation Agreement ("SRA") requiring Respondent to comply with terms and  
21 conditions of monitoring arising out of case MD-21-0687A.

22 5. The SRA states in relevant part:

23 In the event of chemical dependency relapse by Respondent or  
24 Respondent's use of drugs or alcohol in violation of this SRA, Respondent  
25 shall promptly enter into an Interim Order for Practice Restriction and  
Consent to the Same that requires, among other things, that Respondent not  
practice medicine until such time as Respondent successfully completes  
long-term inpatient treatment for chemical dependency designated by the  
PHP and obtains affirmative approval from the Executive Director, in

1 consultation with the chief medical consultant and the lead Board member, to  
2 return to the practice of medicine. Prior to approving Respondent's request to  
3 return to the practice of medicine, Respondent may be required to submit to  
4 witnessed biological fluid collection or undergo any combination of physical  
examination, psychiatric or psychological evaluation. In no respect shall the  
terms of this paragraph restrict the Board's authority to initiate and take  
disciplinary action for violation of this SRA.

5 6. Respondent denied violating the SRA, and entered into an Interim Consent  
6 Agreement for Practice Restriction, effective January 26, 2022 ("First Practice  
7 Restriction").

8 7. Respondent subsequently completed inpatient evaluation and treatment at a  
9 Board-approved facility ("Facility") and was discharged with staff approval.

10 8. Respondent subsequently attended a post-treatment Assessment with a  
11 Board-approved Assessor. The Assessor opined that Respondent was safe to practice  
12 provided he comply with recommendations for additional treatment, aftercare and  
13 monitoring.

14 9. Effective May 23, 2022, Respondent entered into an Interim Consent  
15 Agreement to Participate in the Physician Health Program that vacated the First Practice  
16 Restriction and required Respondent to comply with terms and conditions of PHP  
17 monitoring in accordance with the Assessor's recommendations ("Interim PHP  
18 Agreement"). The Interim PHP Agreement prohibited Respondent from consuming  
19 alcohol.

20 10. On June 9, 2022, Respondent entered into a Monitoring Agreement with the  
21 Kansas Medical Society's Professionals Health Program ("Kansas PHP") that also  
22 required Respondent to abstain from alcohol use and comply with terms and conditions of  
23 substance use monitoring.  
24  
25

11. On June 24, 2022, Respondent self-reported a single incident of alcohol use in violation of both the Interim PHP Agreement and the Kansas PHP Monitoring Agreement.

12. Respondent is currently in compliance with the terms of his PHP monitoring.

## CONCLUSIONS OF LAW

a. The Board possesses jurisdiction over the subject matter hereof and over Respondent.

b. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(f) ("Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while practicing medicine or to the extent that judgment may be impaired and the practice of medicine detrimentally affected.").

c. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(s) ("Violating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under the provisions of this chapter.").

## ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand.

2. Respondent is placed on Probation for a period of five years<sup>1</sup> with the following terms and conditions:

3. Respondent shall not consume alcohol or any food or other substance containing poppy seeds or alcohol.

<sup>1</sup> Respondent's probation shall be retroactive to May 3, 2022.

1           4.     Respondent shall not take any illegal drugs or mood altering medications  
2 unless prescribed for a legitimate therapeutic purpose.

3           5.     If requested by the PHP Contractor, Respondent shall attend a relapse  
4 prevention outpatient program for a duration and frequency recommended by the PHP  
5 Contractor, unless Respondent is excused by the relapse program facilitator for good  
6 cause. The relapse prevention group facilitators shall submit monthly reports to the PHP  
7 regarding Respondent's attendance and progress.

8           6.     Respondent shall continue to participate in any personalized aftercare  
9 programs or activities as recommended by the Assessor in his May 3, 2022 Report.  
10 Respondent shall report on those activities as requested by the PHP, including executing  
11 any releases necessary to allow the PHP to monitor his participation and communicate  
12 directly with and obtain records from the treating providers for those aftercare activities.  
13 Respondent shall be responsible for all costs of aftercare, including costs associated with  
14 compliance of this Board Order.

15          7.     Respondent shall participate in a 12-step recovery program or other self-help  
16 program appropriate for substance abuse as recommended by the PHP. Respondent shall  
17 attend a minimum of three 12-step or other self-help program meetings per week. Two  
18 meetings per month must be Caduceus meetings. Respondent must maintain a log of all  
19 self-help meetings.

20          8.     Respondent shall enter treatment with a PHP Contractor approved  
21 psychiatric provider(s) as recommended by the Assessor in his May 3, 2022 Report and  
22 shall comply with any and all treatment recommendations, including taking any and all  
23 prescribed medications. Respondent shall instruct the treating professional to submit  
24 quarterly written reports to the PHP regarding diagnosis, prognosis, current medications,  
25 recommendation for continuing care and treatment, and ability to safely practice medicine.

1 The reports shall be submitted quarterly to the PHP, the commencement of which to be  
2 determined by the PHP Contractor. Respondent shall provide the treatment professional  
3 with a copy of this Order. Respondent shall pay the expenses for treatment and be  
4 responsible for paying for the preparation of the quarterly reports.

5 9. Respondent shall promptly obtain a Primary Care Physician ("PCP") and  
6 shall submit the name of the physician to the PHP Contractor in writing for approval.  
7 Except in an Emergency, Respondent shall obtain medical care and treatment only from  
8 the PCP and from health care providers to whom the PCP refers Respondent. Respondent  
9 shall promptly provide a copy of this Order to the PCP. Respondent shall also inform all  
10 other health care providers who provide medical care or treatment that Respondent is  
11 participating in the PHP. "Emergency" means a serious accident or sudden illness that, if  
12 not treated immediately, may result in a long-term medical problem or loss of life.

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

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

24 12. Respondent shall provide the PHP Contractor in writing with one telephone  
25 number that shall be used to contact Respondent on a 24 hour per day/seven day per

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

8 13. Respondent shall provide the PHP Contractor with written notice of any plans  
9 to travel out of state.

10 14. Respondent shall successfully complete a PHP approved 36 hour  
11 alcohol/drug awareness education class.

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

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

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

21 18. Respondent shall be responsible for all costs, including costs associated with  
22 participating in the PHP, at the time service is rendered or within 30 days of each invoice  
23 sent to the Respondent. An initial deposit of two (2) months PHP fees is due upon  
24 entering the program. Failure to pay either the initial PHP deposit or monthly fees 60 days  
25

1 after invoicing will be reported to the Board by the PHP Contractor and may result in  
2 disciplinary action.

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

5 20. Respondent shall immediately provide a copy of this Order to all employers,  
6 hospitals and free standing surgery centers where Respondent currently has or in the  
7 future gains or applies for employment or privileges. Within 30 days of the date of this  
8 Order, Respondent shall 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 Order.

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

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

22 23. In the event of a chemical dependency relapse by Respondent or  
23 Respondent's use of controlled substances or alcohol in violation of this Order,  
24 Respondent shall promptly enter into an Interim Consent Agreement for Practice  
25 Restriction that requires, among other things, that Respondent not practice medicine until

1 such time as Respondent successfully completes long-term inpatient treatment designated  
2 by the PHP Contractor and obtains affirmative approval from the Executive Director, in  
3 consultation with the Lead Board Member and Chief Medical Consultant, to return to the  
4 practice of medicine. Prior to approving Respondent's request to return to the practice of  
5 medicine, Respondent may be required to undergo any combination of physical  
6 examinations, psychiatric or psychological evaluations. In no respect shall the terms of this  
7 paragraph restrict the Board's authority to initiate and taken disciplinary action for any  
8 violation of this Order.

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

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

21       26. This Order supersedes any and all Consent Agreements previously entered  
22 into by Respondent and the Board regarding this matter.



27. The Board retains jurisdiction and may initiate new action against Respondent based upon any violation of this Order. A.R.S. § 32-1401(27)(s).

DATED AND EFFECTIVE this 6th day of June, 2024.

## ARIZONA MEDICAL BOARD

By Pat E. McSorley  
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 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 between 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.

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

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

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

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

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

23           11.    Any violation of this Order constitutes unprofessional conduct and may result  
24 in disciplinary action. A.R.S. § § 32-1401(27)(s) ("[v]iolating a formal order, probation,  
25

consent agreement or stipulation issued or entered into by the board or its executive director under this chapter.") and 32-1451.

12. Respondent acknowledges that, pursuant to A.R.S. § 32-2501(16), Respondent cannot act as a supervising physician for a physician assistant while Respondent's license is on probation.

13. ***Respondent has read and understands the conditions of Probation.***

  
\_\_\_\_\_  
COLE J. MCEWEN, M.D.

DATED: 5/30/24


EXECUTED COPY of the foregoing mailed  
this 10th day of June, 2024 to:

Cole J. McEwen, M.D.  
Address of Record

Physician Health Program  
Address on File

ORIGINAL of the foregoing filed  
this 10th day of June, 2024 with:

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

  
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Board staff