

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

2 In the Matter of

Case No. MD-21-0471A

3 **JEDIDIAH J. MALAN, M.D.**

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR DECREE
OF CENSURE AND PROBATION**

4 Holder of License No. 43272
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 February 6, 2024. Jedidiah J. Malan, M.D. ("Respondent"),
9 appeared with legal counsel, Melissa Cuddington, Esq., before the Review Committee for
10 a 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.

12 **FINDINGS OF FACT**

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

15 2. Respondent is the holder of license number 43272 for the practice of
16 allopathic medicine in the State of Arizona.

17 3. The Board initiated case number MD-21-0471A after receiving Respondent's
18 self-report that he had been arrested and charged with felonies and misdemeanors.
19 Respondent's self-report stated that he had pled not guilty to the charges filed against him.
20 Respondent additionally stated that he had voluntarily refrained from the practice of
21 medicine, and had been admitted to an inpatient treatment facility.

22 4. On May 2, 2021, Respondent entered into inpatient treatment. Respondent
23 was discharged with staff approval on August 11, 2021, with recommendations for
24 continued treatment, aftercare, therapy and monitoring through the Physician Health
25 Committee of Alaska ("Alaska PHP") and the Washington Physician Health Program.

1 5. On May 14, 2021, Respondent entered into a Voluntary Suspension of
2 License with the Alaska Medical Board.

3 6. On May 26, 2021, Respondent entered into an Interim Consent for Practice
4 Restriction prohibiting him from practicing medicine in the State of Arizona.

5 7. On October 3, 2022, Respondent entered into a contract with the Alaska
6 PHP for one year of physician health monitoring.

7 8. On October 20, 2022, Respondent pled guilty to Assault 3- Repeat Threat of
8 Death/Injury, a Class C Felony. Respondent was sentenced to 5 years' incarceration, with
9 42 months suspended sentence, as well as payment of a fine and 5 years of probation
10 with terms including obtaining a domestic violence evaluation/risk assessment from an
11 Alaska Department of Corrections approved provider to determine the need for batterer's
12 intervention programming, and substance use monitoring.

13 9. On February 10, 2022, Respondent entered into to a Surrender of License
14 with the Alaska Medical Board.

15 10. On February 18, 2022, the Washington Medical Commission issued an Ex
16 Parte Order of Summary Suspension for Respondent's Washington medical license.

17 11. On April 24, 2023, Respondent underwent a Physician Health Program
18 ("PHP") Assessment with a Board's approved PHP Assessor. Based on the Assessment
19 findings and results, the Assessor opined that Respondent was safe to practice medicine,
20 provided he adheres to recommendations including five years of PHP monitoring and
21 compliance with aftercare and treatment.

22 12. On July 6, 2023, the Physician Health Committee of Alaska provided a report
23 to the Board that Respondent was in compliance with monitoring requirements with no
24 indication of relapse.

1 13. August 24, 2023, the Washington Medical Commission issued Findings of
2 Fact, Conclusions of Law and Final Order of Default indefinitely suspending Respondent's
3 Washington medical license. The Washington Default Order was based on Respondent's
4 failure to timely provide an answer to a Statement of Charges issued in the Washington
5 Commission's investigation of the Alaska criminal matter and related Alaska Medical
6 Board investigation.

7 14. During a Formal Interview on this matter, Respondent testified regarding the
8 incident that led to his criminal charges and conviction. Respondent acknowledged a
9 lapse in judgment centering on escalating alcohol use. Respondent stated that treatment
10 has helped him understand how to appropriately understand and express his emotions.
11 Respondent stated that his sobriety has helped with relying on healthier coping
12 mechanisms. Respondent additionally testified that he learned a lot in treatment as well
13 as the domestic violence intervention course. Respondent stated that he served a period
14 of incarceration and was released in March, 2021.

15 15. Respondent testified that he has continued to voluntarily participate in
16 monitoring and recovery activities with the Alaska PHP. Respondent stated he is currently
17 utilizing Soberlink four times a day and undergoing random urine or blood screening.
18 Additionally, Respondent stated he is attending three recovery meetings a week, and
19 meeting monthly with the Alaska PHP.

20 16. Respondent testified regarding the lessons he has learned in therapy,
21 education and treatment regarding emotional regulation and recovery. Respondent noted
22 that his wife recently moved back in with him after living out of state. Respondent noted
23 that their relationship is much more open, constructive and supportive.

24 17. Respondent testified that his last date of practice was January 11, 2021.
25 When asked about how he has maintained his medical competency, Respondent stated

1 that he took self-assessments through the American Board of Radiology until his
2 certification lapsed due to lack of an active license. Respondent estimated that he has
3 continued to take continuing medical education ("CME"), estimating that he has completed
4 approximately 100 hours of educational coursework. Respondent stated he would like to
5 practice in on-site or teleradiology. Respondent stated that he is a general diagnostic
6 radiologist with a subspecialization in musculoskeletal imaging. Respondent stated that
7 the terms of his probation allows him to either transfer it to another jurisdiction, or to work
8 out of state and return to Alaska on a monthly basis.

9 18. During that same Formal Interview, Review Committee members
10 commented on the favorable nature of the PHP reports regarding Respondent, and agreed
11 that any return to practice should be accompanied by PHP monitoring. With regard to
12 Respondent's time out of practice, a Committee member familiar with the Board of
13 Radiology's assessment modules noted that they are fairly rigorous. After discussion,
14 Committee members agreed that requiring Respondent to utilize a Proctor to conduct
15 overreads for three months would ensure that Respondent was safely returning to
16 practice. Board staff confirmed that the PHP could monitor Respondent if he remained in
17 Alaska by remote monitoring and coordination with the Alaska PHP.

18 **CONCLUSIONS OF LAW**

19 1. The Board possesses jurisdiction over the subject matter hereof and over
20 Respondent.

21 2. The conduct and circumstances described above constitute unprofessional
22 conduct pursuant to A.R.S. § 32-1401(27)(a) ("Violating any federal or state laws or rules
23 and regulations applicable to the practice of medicine."). Specifically, Respondent's
24 conduct violated A.R.S. § 32-3208(A) ("A health professional who has been charged with a
25 misdemeanor involving conduct that may affect patient safety or a felony after receiving or

renewing a license or certificate must notify the health professional's regulatory board in writing within ten working days after the charge is filed.”).

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(d) ("Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.").

4. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(f) ("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.").

5. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(p) ("Action that is taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine, the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Decree of Censure.

1 2. The Interim Consent Agreement for Practice Restriction is vacated upon
2 compliance with Proctor approval requirement of paragraph 3(a) and the enrollment
3 requirement of paragraph 3(b) below.

4 3. Respondent is placed on Probation for a period of 5 years with the following terms
5 and conditions:

6 **a. Proctoring**

7 Prior to returning to the practice of medicine, Respondent shall submit the name of
8 a Proctor who is a physician licensed and in good standing with the Board for approval by
9 Board staff. The Proctor shall concurrently over-read at least 5% of Respondents cases
10 for three months. The Proctor shall provide monthly reports to the Board regarding
11 Respondent's safety to practice medicine, diagnostic interpretation skills and clinical
12 judgment. After three months, Respondent may request termination of the requirement for
13 proctoring. Respondent's request for termination must be accompanied by a statement
14 from the Proctor that Respondent is safe to practice without oversight.

15 **b. Physician Health Program**

16 Within 5 days of the date of this Order, Respondent shall provide the Board proof of
17 enrollment with a PHP Contractor for participation in the Board's PHP for a period of five
18 (5) years. Respondent shall comply with the following terms and conditions:

19 i. Respondent shall not consume alcohol or any food or other substance
20 containing poppy seeds or alcohol.

21 ii. Respondent shall not take any illegal drugs or mood altering
22 medications unless prescribed for a legitimate therapeutic purpose.

23 iii. Respondent shall continue to participate in any personalized aftercare
24 programs or activities as recommended by the Assessor in his PHP Assessment
25 Report. Respondent shall report on those activities as requested by the PHP,

1 including executing any releases necessary to allow the PHP to monitor his
2 participation and communicate directly with and obtain records from the treating
3 providers for those aftercare activities. Respondent shall be responsible for all
4 costs of aftercare, including costs associated with compliance of this Board Order.

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

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

23 vi. If recommended by the PHP Contractor, Respondent shall attend a
24 relapse prevention outpatient program for a duration and frequency recommended
25 by the PHP Contractor, unless Respondent is excused by the relapse program

1 facilitator for good cause. The relapse prevention group facilitators shall submit
2 monthly reports to the PHP regarding Respondent's attendance and progress.

3 vii. Respondent shall enter treatment with a PHP Contractor approved
4 addiction specialist as recommended by the Assessor in his PHP Assessment
5 Report and shall comply with any and all treatment recommendations, including
6 taking any and all prescribed medications. Respondent shall instruct the treating
7 addiction specialist to submit quarterly written reports to the PHP regarding
8 diagnosis, prognosis, current medications, recommendation for continuing care and
9 treatment, and ability to safely practice medicine. The reports shall be submitted
10 quarterly to the PHP, the commencement of which to be determined by the PHP
11 Contractor. Respondent shall provide the addiction specialist with a copy of this
12 Order. Respondent shall pay the expenses for treatment and be responsible for
13 paying for the preparation of the quarterly reports. Respondent may submit a
14 written request to the PHP Contractor requesting termination of the requirement that
15 Respondent remain in treatment with a addiction specialist. The decision to
16 terminate will be based in part upon the treating addiction specialist's
17 recommendation for continued care and treatment.

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

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

1 x. Respondent shall provide the PHP Contractor in writing with one
2 telephone number that shall be used to contact Respondent on a 24 hour per
3 day/seven day per week basis to submit to biological fluid, hair, and/or nail testing
4 to ensure compliance with the PHP. For the purposes of this section, telephonic
5 notice shall be deemed given at the time a message to appear is left at the contact
6 telephone number provided by Respondent. Respondent authorizes any person or
7 organization conducting tests on the collected samples to provide testing results to
8 the PHP Contractor. Respondent shall comply with all requirements for biological
9 fluid, hair, and/or nail collection. Respondent shall pay for all costs for the testing.

10 xi. Respondent shall provide the PHP Contractor with written notice of
11 any plans to travel out of state.

12 xii. Respondent shall successfully complete a PHP approved 36 hour
13 alcohol/drug awareness education class.

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

17 xiv. Respondent provides full consent for the PHP Contractor to discuss
18 the Respondent's case with the Respondent's PCP or any other health care
19 providers to ensure compliance with the PHP.

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

24 xvi. Respondent shall be responsible for all costs, including costs
25 associated with participating in the PHP, at the time service is rendered or within 30

1 days of each invoice sent to the Respondent. An initial deposit of two (2) months
2 PHP fees is due upon entering the program. Failure to pay either the initial PHP
3 deposit or monthly fees 60 days after invoicing will be reported to the Board by the
4 PHP Contractor and may result in disciplinary action.

5 xvii. Respondent shall appear in person before with the PHP Contractor for
6 interviews upon request, upon reasonable notice.

7 xviii. Respondent shall immediately provide a copy of this Order to all
8 employers, hospitals and free standing surgery centers where Respondent currently
9 has or in the future gains or applies for employment or privileges. Within 30 days of
10 the date of this Order, Respondent shall provide the PHP with a signed statement of
11 compliance with this notification requirement. Respondent is further required to
12 notify, in writing, all employers, hospitals and free standing surgery centers where
13 Respondent currently has or in the future gains or applies for employment or
14 privileges of a violation of this Order.

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

23 xx. The PHP Contractor shall immediately notify the Board if Respondent
24 is non-compliant with any aspect of this Order or is required to undergo any
25 additional treatment.

1 xxi. In the event of a chemical dependency relapse by Respondent or
2 Respondent's use of controlled substances or alcohol in violation of this Order,
3 Respondent shall promptly enter into an Interim Consent Agreement for Practice
4 Restriction that requires, among other things, that Respondent not practice
5 medicine until such time as Respondent successfully completes long-term inpatient
6 treatment designated by the PHP Contractor and obtains affirmative approval from
7 the Executive Director, in consultation with the Lead Board Member and Chief
8 Medical Consultant, to return to the practice of medicine. Prior to approving
9 Respondent's request to return to the practice of medicine, Respondent may be
10 required to undergo any combination of physical examinations, psychiatric or
11 psychological evaluations. In no respect shall the terms of this paragraph restrict
12 the Board's authority to initiate and taken disciplinary action for any violation of this
13 Order.

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

17 **4. Probation Termination**

18 Prior to the termination of Probation, Respondent must submit a written request to
19 the Board for release from the terms of this Order. Respondent's request for release will
20 be placed on the next pending Board agenda, provided a complete submission is received
21 by 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.

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

3 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

4 Respondent is hereby notified that he has the right to petition for a rehearing or
5 review. The petition for rehearing or review must be filed with the Board's Executive
6 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The
7 petition for rehearing or review must set forth legally sufficient reasons for granting a
8 rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after
9 date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed,
10 the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

11 Respondent is further notified that the filing of a motion for rehearing or review is
12 required to preserve any rights of appeal to the Superior Court.

13 DATED AND EFFECTIVE this 5th day of April, 2024.

14 ARIZONA MEDICAL BOARD

15
16 By Patricia E. McSorley
17 Patricia E. McSorley
18 Executive Director
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1 EXECUTED COPY of the foregoing mailed
2 this 5th day of April, 2024 to:

3 Melissa Cuddington, Esq.
4 The Goldberg Law Group
5 60 East Rio Salado Parkway, Suite 900,
6 Tempe, Arizona 85281
7 Attorney for Respondent

8 ORIGINAL of the foregoing filed
9 this 5th day of April, 2024 with:

10 Arizona Medical Board
11 1740 West Adams, Suite 4000
12 Phoenix, Arizona 85007

13 Michelle Rudes
14 Board staff
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