

1 Respondent's clinic on November 26 and 27, 2019 in the amounts of \$4000.00 and
2 \$6900.00, respectively.

3 5. An unsigned treatment plan dated November 27, 2019, indicated planned
4 procedures including intravenous and injection stem therapy, as well as twilight sedation
5 for a total cost of \$14,900.00. The treatment plan listed a procedure date of January 17,
6 2020.

7 6. Shortly before the planned procedure, EW was advised that Respondent's
8 office would be closing temporarily due to the COVID-19 pandemic. Additionally,
9 Respondent took an annual sabbatical from July 17 through September, 7 2020. In his
10 written response to the Board, Respondent stated that he spoke to EW in September and
11 recommended that EW reach out to a colleague to schedule a consultation, and advised
12 that EW should request a refund if he did not intend on going through with the treatment.

13 7. Respondent's staff attempted to contact EW between April 25, 2022 to June
14 8, 2022 to obtain his credit card information and to discuss re-evaluation of a refund.

15 8. On September 11, 2022, Respondent documented a phone call to EW to
16 discuss the need to schedule an evaluation or review processes for a refund.

17 9. On April 13, 2022, Respondent documented another phone call with EW,
18 who requested a refund. Respondent advised EW that he was beyond the time to process
19 a refund and to pursue the matter through his credit card company. Respondent offered to
20 assist EW if the credit card company denied his request.

21 10. In his written response to the Board, Respondent stated that a Merchant
22 Services account representative confirmed that EW's first request for a refund was
23 January, 2022 and denied that the patient had been abandoned.

24 11. EW did not receive any of the planned treatments from Respondent's clinic,
25 and the funds were not refunded to him.

1 12. During a Formal Interview on this matter, Respondent advised that a
2 document from another case had been inadvertently included in his matter, and requested
3 a continuance in order to obtain counsel due to the document. Committee members noted
4 that previous requests for an extension had been made by Respondent. Board staff
5 confirmed that the document was uploaded in error, but that the action occurred after the
6 completion of the investigation, and was not used to formulate investigative conclusions
7 and recommendations. Board Staff confirmed that Respondent had been provided with
8 the case file and staff disciplinary recommendations prior to the Board's October, 2023
9 meeting. Based on the notice to the physician and the delay in the case, the Committee
10 voted to deny Respondent's request for continuance. Respondent was advised of his right
11 to counsel, and his option to proceed to formal hearing. Committee members confirmed
12 for the record that the inadvertently included document would not impact their decision in
13 the case and their decision would be based solely on the information appropriately in the
14 case file. Respondent elected to proceed with the Formal Interview.

15 13. During questioning by Committee members, Respondent confirmed that the
16 amounts paid by EW had been posted as income to the practice. Respondent discussed
17 the role of merchant services in billing and refunds for his practice, and confirmed that his
18 refund policy was an internal policy, and created by his office. Respondent stated that he
19 felt that he did the best he could for the patient in accordance with his office policies for a
20 refund.

21 14. During that same Formal Interview, Review Committee members
22 commented that they agreed with the staff recommendation for discipline in the case, and
23 voted unanimously to issue a Letter of Reprimand and Probation with an order to
24 reimburse EW \$14,900.00.

25

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)(v) ("Charging a fee for services not rendered or
6 dividing a professional fee for patient referrals among health care providers or health care
7 institutions or between these providers and institutions or a contractual arrangement that
8 has the same effect.").

9 **ORDER**

10 IT IS HEREBY ORDERED THAT:

- 11 1. Respondent is issued a Letter of Reprimand.
12 2. Respondent is placed on Probation for a period of 90 days with the following terms
13 and conditions:

14 a. **Reimbursement**

15 Respondent shall reimburse EW \$14,900 via certified funds within 90 days from the
16 date of this Order. Payment shall be made directly to EW via certified U.S. mail or a
17 delivery service with tracking capabilities. Respondent shall provide Board staff with
18 satisfactory proof of reimbursement, including a copy of the certified payment and tracking
19 information confirming delivery prior to requesting termination of Probation.

20 b. **Obey All Laws**

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

24 c. **Probation Termination**

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

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

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

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

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

21 DATED AND EFFECTIVE this 7th day of February, 2024.

22 ARIZONA MEDICAL BOARD

23
24 By Patricia E. McSorley
25 Patricia E. McSorley
Executive Director

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EXECUTED COPY of the foregoing mailed
this 7th day of February, 2024 to:

Todd K. Malan, M.D.
Address of Record

ORIGINAL of the foregoing filed
this 7th day of February, 2024 with:

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

Michelle Probst
Board staff