BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

ROB F. SCHUSTER, M.D.  
Holder of License No. 35558  
For the Practice of Allopathic Medicine  
In the State of Arizona.

Case No. MD-14-0110A

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

The Arizona Medical Board ("Board") considered this matter at its public meeting on June 3, 2015. Rob F. Schuster, M.D. ("Respondent"), appeared with legal counsel, Mr. Stephen Myers, before the Board for a formal interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand and Probation after due consideration of the facts and law applicable to this matter.

FINDINGS OF FACT

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

2. Respondent is the holder of license number 35558 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-14-0110A after receiving a complaint from a pharmacist alleging that Respondent attempted to fill a prescription for Dianabol, a drug banned by the FDA. The prescription appeared to have been authorized by licensed physician SB.

4. The complainant reported that after consultation with SB's medical assistant, the prescription request was cancelled. Respondent's employer ("the Hospital") was subsequently notified of the incident. The Hospital interviewed SB, who admitted to allowing Respondent to use her DEA number to write himself a prescription for Ambien sometime during the summer of 2013. SB indicated that other than the one-time
authorization, she was unaware of any other use of her DEA number until she reviewed
her recorded prescribing history.

5. During the course of the Board’s investigation, SB submitted correspondence
to the Board reporting Respondent’s conduct, stating that she did not authorize the use of
her DEA number and was unaware that Respondent had ordered the medication under
her name.

6. Respondent resigned while under investigation by the Hospital.

7. After having been notified by the Board of its investigation, Respondent
presented for an informal interview with Board staff. Respondent admitted to the use of
SB’s DEA number to obtain medications for himself between August of 2013 and January
of 2014 without SB’s expressed consent.

8. Respondent underwent an assessment with the Board’s Physician Health
Program (“PHP”) Contractor, and it was recommended that he enroll in PHP for a period of
two years with an additional requirement that he abstain from the use of anabolic and
abusive steroids. As a result of the PHP Contractor’s assessment and recommendations,
Respondent entered into an Interim Consent Agreement for PHP participation, effective
March 19, 2014.

9. On April 30, 2014, Respondent tested positive for Ethyl Sulfate, a metabolite
of alcohol. A PEth test of May 14, 2014 was also positive for Phosphatidyl Ethanol,
another metabolite of alcohol. Pursuant to the terms of his Interim Consent Agreement for
PHP participation, Respondent was to abstain from alcohol consumption.

10. Respondent admitted to the PHP Contractor that he consumed alcohol in
May, and stated that he did not “get” the meaning of the Interim Consent Agreement. As a
result of the incident, Respondent was referred for a comprehensive evaluation.
11. On May 21, 2014, Respondent presented to Promises Treatment Center ("Promises") for a comprehensive evaluation. Promises was unable to determine whether Respondent's behavior was defiant versus true alcohol dependence. Promises recommended that the evaluation be continued as well as treatment for a minimum of thirty days to help bolster Respondent's understanding of his alcohol use disorder. On July 19, 2014, Respondent was discharged from Promises with staff approval. Promises' evaluation concluded that Respondent still held the diagnoses of steroid abuse and alcohol abuse, and continuation of abuse-track monitoring was recommended.

12. According to the PHP Contractor, Respondent's consumption of alcohol in violation of his Interim Consent Agreement did not represent significant non-compliance. The PHP Contractor recommended that Respondent continue to be monitored under his Interim Consent Agreement for PHP Participation dated March 19, 2014.

13. During the Board's investigation into Respondent's alleged conduct, correspondence was received from a hospital indicating that as part of Respondent's initial credentialing application, he failed to disclose that he was subject to an Interim Consent Agreement with the Board. Pursuant to the Interim Consent Agreement, Respondent is required to provide a copy of the Agreement to all current and future employers and all hospitals and free standing surgery centers where Respondent has privileges.

14. At a formal interview on the matter, the PHP Contractor reported that Respondent has since been compliant with the terms and conditions of his Interim Consent Agreement, including monitoring and abstinence from using alcohol and controlled substances.

15. Also at the formal interview, Respondent testified that he has engaged in the therapeutic process offered by PHP, has a new understanding of the importance of work-life balance and is committed to his recovery.
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)(g) ("[U]sing controlled substances except if prescribed by another physician for use during a prescribed course of treatment.").

c. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(j) ("[P]rescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.").

d. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(r) ("[V]iolating 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.").

e. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(t) ("[K]nowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand.

2. Respondent shall promptly enroll in and participate in the Board’s Physician Health Program (“PHP”) for a period of two years.

1 Respondent’s PHP participation is retroactive to July 19, 2014.
3. Respondent shall not consume alcohol or any food or other substance containing poppy seeds or alcohol.

4. Respondent shall not take any illegal drugs or mood altering medications.

5. All prescriptions for controlled substances shall be approved by the PHP prior to being filled except in an Emergency. Controlled substances prescribed and filled in an emergency shall be reported to the PHP within 48 hours. Respondent shall take no Medication unless Respondent’s Primary Care Physician ("PCP") or other health care provider to whom the PCP refers Respondent prescribes and the PHP approves the Medication. Respondent shall not self-prescribe any Medication. “Medication” means a prescription-only drug, controlled substance, and over-the-counter preparation, other than plain aspirin, plain ibuprofen, and plain acetaminophen. “Emergency” means a serious accident or sudden illness that, if not treated immediately, may result in a long-term medical problem or loss of life.

6. Respondent shall submit to random biological fluid, hair and nail testing for two years from the date of this Order (as specifically directed below) to ensure compliance with PHP.

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

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

10. Respondent provides full consent for the PHP to discuss the Respondent’s case with the Respondent’s PCP or any other health care providers to ensure compliance with PHP.

11. The relationship between the Respondent and the PHP is a direct relationship. Respondent shall not use an attorney or other intermediary to communicate with the PHP on participation and compliance issues.

12. Respondent shall be responsible for all costs, including costs associated with participating in PHP, at the time service is rendered or within 30 days of each invoice sent to the Respondent. An initial deposit of two months PHP fees is due upon entering the program. Failure to pay either the initial PHP deposit or monthly fees 60 days after invoicing will be reported to the Board by the PHP and may result in disciplinary action up to and including revocation.

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

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

15. The PHP shall immediately notify the Board if Respondent is non-compliant with any aspect of the monitoring requirements or this Order.

16. In the event of the use of drugs or alcohol by Respondent in violation of this Order, Respondent shall promptly enter into an Interim Consent Agreement for Treatment at a PHP approved facility. Following the successful conclusion of treatment, Respondent shall enter into an Interim Consent Agreement for full participation in PHP. In no respect shall the terms of this paragraph restrict the Board's authority to initiate and take disciplinary action for violation of this Order.

17. 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 14 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.

18. This Order supersedes any and all Consent Agreements previously entered into by Respondent and the Board regarding this matter.
19. The Board retains jurisdiction and may initiate new action against Respondent based upon any violation of this Order.

**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 6th day of August, 2015.

ARIZONA MEDICAL BOARD

By [Signature]
Patricia E. McSorley
Executive Director

EXECUTED COPY of the foregoing mailed this 6th day of August, 2015 to:

Stephen W. Myers
Myers & Jenkins
One East Camelback Road Suite 500
Phoenix, AZ 85012
Attorney for Respondent
ORIGINAL of the foregoing filed this 29th day of August, 2015 with:

Arizona Medical Board
9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

[Signature]
Board Staff