BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

ERIC BENJAMIN, M.D.

Holder of License No. 15965
For the Practice of Allopathic Medicine
In the State of Arizona.

Case No. MD-14-0997A

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

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

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 15965 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-14-0997A after receiving notification of a malpractice settlement arising out of Respondent's care and treatment of a 20 year-old female patient ("VL") and alleging that over the course of eleven years while she was a child, Respondent misdiagnosed her as bipolar and prescribed psychiatric medications that caused tardive dyskinesia and a memory disorder.

4. Respondent's first appointment with VL occurred in September, 1996 when she was five years old. VL was referred to Respondent for an assessment of Attention Deficit Hyperactivity Disorder ("ADHD") and possible depression. Respondent's Nurse Practitioner ("NP") initially assessed VL and noted that she had excessive anger, difficulty following direction, excessive worry, and impulsivity. The NP diagnosed VL with

Depression not otherwise specified ("NOS"). She prescribed VL Prozac and requested that VL follow-up in a month to see Respondent.

5. During the second visit, VL was seen again by the NP and was reported to have been hearing voices. The NP changed VL's diagnosis to Bipolar Disorder and initiated Depakote. Respondent was not present during the initial assessment; however, he co-signed the NP's note and ordered refills of Prozac prior to seeing VL himself.

6. Respondent first saw VL in December of 1996 for a medication review and noted that VL was still reporting that she had been hearing voices. Respondent increased the dose of Mellaril, continued Depakote, and discontinued Prozac. Respondent requested that VL follow-up with the NP in two to six weeks and then follow-up with him in eight to ten weeks.

7. On January 1, 1997, VL was admitted to Phoenix Children's Hospital per a telephone order by a colleague of Respondent due to a crisis where VL brandished a knife at home. On January 6, 1997, Respondent gave a telephone order to discharge VL home to her mother; however, the discharge summary was not completed until January 28, 1997.

8. On January 24, 1997, VL was seen by the NP who documented that VL was still hearing voices but only at home and not at school. The NP increased the dose of Mellaril and Respondent co-signed the note. Respondent did not see VL again until more than eight months after her discharge from the hospital.

9. Respondent continued to treat VL for the next ten years. During that time, he saw VL fourteen times and both Respondent and the NP documented her behaviors as "nasty," "belligerent," "hostile," and "irritable." During that time period, VL's diagnosis remained unchanged. Additionally, the interval between visits varied between two weeks

to eighteen months, while Respondent continued to prescribe, change, and refill medications without seeing VL in person or documenting a rationale for the changes.

10. In February of 2005, VL was admitted to St. Luke's Hospital after threatening her mother. The treating physician noted that VL's admission was a result of mood disturbance with inconsistent medication. VL was discharged in March 2005, but Respondent did not see VL until almost one month after her discharge. Over the next two years, Respondent only saw VL six times but continued to write prescriptions for several classes of medications.

11. The standard of care requires a physician to conduct a comprehensive psychiatric evaluation before establishing a diagnosis or initiating treatment. Respondent deviated from the standard of care by failing to conduct his own comprehensive psychiatric evaluation of VL.

12. The standard of care requires a physician to utilize safe, effective, and approved medications for children and not engage in polypharmacy unless absolutely indicated. Respondent deviated from the standard of care by prescribing Mellaril as well as other antipsychotics and mood stabilizers without documenting psychosis or cyclical mood disturbance.

13. The standard of care requires a physician to obtain an EKG prior to initiating treatment with medications that have known cardiac toxicity. Respondent deviated from the standard of care by failing to obtain an EKG prior to the initiation of Mellaril.

14. The standard of care prohibits a physician from prescribing tranquilizing medication to a non-psychotic child as a chemical restraint. Respondent deviated from the standard of care by prescribing an antipsychotic for aggression, which was not approved for chemical restraint in a 5 year-old child.

15. The standard of care requires a physician to not use Mellaril until other medications have been tried and failed. Respondent deviated from the standard of care by prescribing Mellaril as a first choice medication.

16. The standard of care requires a physician to administer the Abnormal Involuntary Movement Scale ("AIMS") testing at least every six months then annually to assess for drug-induced movement disorders. Respondent deviated from the standard of care by failing to conduct AIMS testing.

17. The standard of care requires a physician to conduct in-person follow-up visits with a child. Respondent deviated from the standard of care by failing to require timely in-person contact or follow-up visits with VL while continuing to prescribe medications.

18. The standard of care requires a physician to personally attend to a child who has been hospitalized within 24 hours of admission and daily throughout the stay, and to document the clinical status of the child, daily and not retrospectively. Respondent deviated from the standard of care by failing to attend to VL within 24 hours of admission in the hospital and document his visits in the hospital.

19. The standard of care requires a physician to timely dictate a discharge summary that accurately reflects the course of hospitalization and the patient's clinical status at the time of discharge. Respondent deviated from the standard of care by failing to timely dictate the January 1997 discharge summary, which was done twenty-two days after discharge.

20. The standard of care requires a physician to make their own assessment of the child and not rely on the parent to be the doctor's "eyes and ears." Respondent deviated from the standard of care by placing too much responsibility on the mother to assess VL's symptoms.

21. The standard of care prohibits a physician from allowing the patient's parent to decide or dictate medication changes. Respondent deviated from the standard of care by allowing VL's mother to make changes to the child's medication on her own volition.

22. The standard of care requires a physician to coordinate care with the patient's therapists or other caregivers. Respondent deviated from the standard of care by failing to coordinate care with the patient's therapist.

23. The standard of care requires a physician to reconsider diagnoses and the treatment plan if the patient fails to make progress in treatment. Respondent deviated from the standard of care by failing to reassess VL.

24. The standard of care requires a physician to assess a patient for substance abuse. Respondent deviated from the standard of care by failing to document an assessment of VL's drug and alcohol use and/or risk.

25. Actual harm occurred to the patient in that VL never improved to the point of stabilization.

26. There was the potential for patient harm in that VL was exposed to considerable risk from adverse drug reactions and exposed to undue suffering, disruption and dysfunction.

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)(e)("Failing or refusing to maintain adequate records on a patient.").

c. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(q)("Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand.

2. Respondent is placed on Probation for a period of six months with the following terms and conditions:

a. Continuing Medical Education

Within 6 months of the effective date of this Order, Respondent shall obtain no less than 15 hours of Board Staff pre-approved Category I Continuing Medical Education ("CME") in an intensive, in-person course regarding medical recordkeeping; a minimum of 5 hours of Board staff pre-approved Category I CME in child psychiatry risk management; and a minimum of 5 hours of Board staff pre-approved Category I CME in ethics. Respondent shall within **thirty days** of the effective date of this Order submit his request for CME to the Board for pre-approval. Upon completion of the CME, Respondent shall provide Board staff with satisfactory proof of attendance. The CME hours shall be in addition to the hours required for the biennial renewal of medical licensure. The Probation shall terminate upon Respondent's proof of successful completion of the CME.

b. Obey All Laws

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

c. **Tolling**

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

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

DATED AND EFFECTIVE this 5th day of August, 2016.

ARIZONA MEDICAL BOARD

By Patricia 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 are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving 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.

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

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

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

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

10. Any violation of this Order constitutes unprofessional conduct and may result in disciplinary action. 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 this chapter.") and 32-1451.

11. ***Respondent has read and understands the conditions of probation.***

ERIC BENJAMIN, M.D.

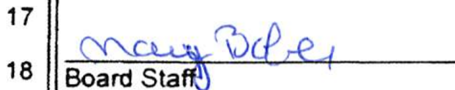
DATED: 6-3-16

EXECUTED COPY of the foregoing mailed
this 5th day of august, 2016 to:

Christa D. Torralba
Torralba Ogden, PC
3800 N Central Ave, Suite 700
Phoenix, AZ 85012
Attorney for Respondent

ORIGINAL of the foregoing filed
this 5th day of august, 2016 with:

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



Board Staff