BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

RICHARD A. WALL, M.D.

Case No. MD-17-0472A

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR PROBATION

Holder of License No. 10250
For the Practice of Allopathic Medicine
In the State of Arizona.

The Arizona Medical Board ("Board") considered this matter at its public meeting on April 17, 2018. Richard A. Wall, M.D. ("Respondent"), appeared with legal counsel, Cody M. Hall, Esq., 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 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 10250 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-17-0472A after receiving a complaint from patient SK, a 58 year-old female, alleging that Respondent kissed her at an appointment in 2016, and again in March of 2017 during an appointment.

4. During the Board’s investigation into the current matter, Respondent underwent a psychosexual evaluation at a Board approved facility. The evaluators concluded that Respondent did not have a psychiatric diagnosis requiring treatment, but did make recommendations to prevent reoccurrence of the events leading to the Board’s current investigation, including using a chaperone and establishing a therapeutic relationship with a psychologist to assist him to understand the power differential between a physician and his patient.
5. During a Formal Interview on this matter, Respondent denied the allegations from SK, and stated that the patient initiated the kiss. Respondent admitted that he failed to document the encounter in SK’s medical record, and did not tell his supervisor that the incident had occurred. Respondent testified that since the complaint, he has not hugged any patient, and has his medical assistant come in after the end of every appointment. Respondent stated that he did not obtain treatment from a psychologist as recommended by the evaluators.

6. In 2007, Respondent’s employer at the time settled a malpractice claim from a patient who alleged that Respondent kissed her on the lips during an examination. The records from Respondent’s employee file indicate that he had been advised by his employer to limit physical contact with his patients. The settlement was not reported to the Board until a complaint was received in 2013 by an additional patient, which resulted in an investigation. Respondent denied recollection of the reported incident, completed a two credit continuing medical education course in maintaining boundaries, and stated that he would no longer hug or kiss patients in the future. The 2013 investigation was closed for lack of sufficient evidence.

7. During that same Formal Interview, Board members commented that a finding of unprofessional conduct was appropriate, and that discipline was warranted, based on the repetitive occurrences of Respondent’s behavior, and his failure to discuss incidents with colleagues and peers. Additionally, Board members agreed that Respondent should be required to utilize a scribe or chaperone, and engage in treatment as recommended by the evaluating facility.

**CONCLUSIONS OF LAW**

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent.
2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(r) ("Committing any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.").

3. The conduct and circumstances described in paragraphs 3-5 above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(aa) ("Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes: (ii) Making sexual advances, requesting sexual favors or engaging in any other verbal conduct or physical contact of a sexual nature.").

ORDER

IT IS HEREBY ORDERED THAT:

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

   a. **Chaperone/Scribe**

      Respondent shall have a female chaperone or scribe present while examining or treating all female patients in all settings, including but not limited to office, hospital, and clinic. The female chaperone may be an Arizona licensed healthcare provider (i.e. registered nurse, licensed practical nurse or physician assistant) or Respondent may utilize a scribe employed by the Respondent, hospital or clinic and may not be a representative or relative who accompanied the patient. Respondent shall instruct the female chaperone to document her presence by signing, dating, and legibly printing her name on each patient's chart at the time of the examination. Respondent shall instruct the
female chaperone to immediately report any inappropriate behavior to Respondent and the
Board.

b. **Board-Approved Psychologist**

Respondent shall enter treatment with a psychologist as recommended by the
evaluator and shall comply with any and all treatment recommendations. Respondent shall
instruct the treating psychologist to submit written reports to Board staff regarding
diagnosis, prognosis, current medications, recommendation for continuing care and
treatment, and ability to safely practice medicine. The reports shall be submitted quarterly
to Board staff for the duration of treatment. Respondent shall pay the expenses of
treatment and is responsible for paying for the preparation of the quarterly reports.
Respondent shall authorize the psychologist to communicate with Board staff regarding
Respondent's compliance with treatment, and if at any time the psychologist finds
evidence that Respondent is a safety threat to patients.

After 12 months of treatment with the psychologist, Respondent may submit a
written request to Board staff requesting that the Board terminate the requirement that
Respondent remain in treatment with the psychologist. Respondent's request must be
accompanied by a final report from the psychologist affirming that Respondent has
completed treatment and is safe to practice. The Board shall have the sole discretion to
determine whether to grant Respondent's request for termination of this requirement.

c. **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.

d. 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.

e. Probation Termination

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 30 days prior to the Board meeting. Respondent’s request for release must provide the Board with evidence establishing that she 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.

2. 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).

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 14th day of June, 2018.

ARIZONA MEDICAL BOARD

By Patricia E. McSorley
Executive Director

EXECUTED COPY of the foregoing mailed this 14th day of June, 2018 to:

Cody M. Hall
Broening Oberg Woods & Wilson, PC
1122 E Jefferson
Phoenix, AZ 85034
Attorney for Respondent

ORIGINAL of the foregoing filed this 14th day of June, 2018 with:

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

Mary Bailey
Board staff