

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **HOWARD D. TOFF, M.D.**

4 Holder of License No. 19314  
5 For the Practice of Allopathic Medicine  
6 In the State of Arizona.

**Case No. MD-19-0219A**

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

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

11 **FINDINGS OF FACT**

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

14 2. Respondent is the holder of license number 19314 for the practice of  
15 allopathic medicine in the State of Arizona.

16 3. The Board initiated case number MD-19-0219A after receiving a complaint  
17 regarding Respondent's care and treatment of a 26 year-old male patient ("Patient 1")  
18 alleging inappropriate prescribing and medication management; and failure to address  
19 aberrant behavior and patient non-compliance.

20 4. Patient 1 was an established patient of Respondent's practice with a history  
21 of anxiety and depression, and Substance Use Disorder.

22 5. After a period of treatment during which Respondent had been prescribing  
23 Patient 1 clonazepam via phone contact and occasional face-to-face visits, Patient 1 saw  
24 Respondent on December 22, 2016 and requested Adderall to help with focus and assist  
25 with studying. Respondent diagnosed Patient 1 with ADHD and prescribed Adderall XR  
20mg in the morning, and continued Patient 1's clonazepam 0.5 gm up to twice a day.

1 Respondent continued to treat Patient 1 through February 19, 2019 with these medications  
2 as well as others including trials of duloxetine and sertraline. Patient 1's medical record  
3 includes concerns regarding psychosis and self-harm, as well as substance abuse  
4 including emergency room treatment for substance induced psychosis in September,  
5 2018.

6 6. After Patient 1 was discharged, Respondent resumed his treatment, with  
7 medications including Adderall, clonazepam and zolpidem, with ongoing substance misuse  
8 concerns noted. As of the last date of treatment reviewed, Patient 1 reported that he had  
9 been consuming alcohol. Respondent discussed drug treatment rehabilitation with Patient  
10 1 and Patient 1's father agreed to keep and dispense Patient 1's Adderall.

11 7. Patient 2 was a 46 year-old female with past medical history including  
12 Bipolar I disorder, insomnia and ADHD who was an established patient of Respondent's  
13 practice. As of March, 2016, Patient 2's diagnoses also included cannabis and alcohol  
14 use disorder in sustained remission. Respondent prescribed Patient 2 medications  
15 including Diazepam, Temazepam, Ambien and Adderall. Patient 2's record included  
16 documentation of multiple requests for early refills and dosage increases.

17 8. Patient 3 was a 37 year-old female with past medical history including  
18 depression, chronic mood lability, dysthymia and self-reported ADHD who was an  
19 established patient of Respondent's practice. As of 2018, Patient 3 was noted to have a  
20 past history of drug and alcohol abuse. Respondent prescribed Respondent medications  
21 including alprazolam, and Adderall. Patient 3's record included documentation of early  
22 refill requests and dispensing medications in amounts higher than recommended use.

23 9. Patient 4 was a 35 year-old male with past medical history of anxiety,  
24 insomnia and GI complaints who established care with Respondent in 2016. Respondent  
25 prescribed Patient 4 medications including Zoloft, alprazolam, and clonazepam. Patient 4

1 was concurrently being prescribed tramadol by another provider. Patient 4's record  
2 included documentation of multiple early refill requests and inability to adhere to attempted  
3 taper protocols.

#### 4 **Deviations from the Standard of Care**

5 10. The standard of care requires a physician to recognize and address aberrant  
6 behaviors and non-compliance. Respondent deviated from the standard of care by failing  
7 to address Patient 1, Patient 2, Patient 3 and Patient 4's aberrant behaviors including  
8 signs of alcohol and/or substance misuse.

9 11. The standard of care prohibits a physician from prescribing early refills of  
10 controlled substances without a clinical rationale. Respondent deviated from the standard  
11 of care by providing early refills to Patient 2, Patient 3 and Patient 4 without adequate  
12 clinical rationale.

13 12. The standard of care prohibits a physician from diagnosing a patient with  
14 attention deficit disorder without adequate clinical criteria. Respondent deviated from the  
15 standard of care by diagnosing Patient 1 and Patient 2 with attention deficit disorder  
16 without adequate clinical criteria.

17 13. The standard of care prohibits a physician from prescribing controlled  
18 substances for long term use in a patient with substance use disorder without adequate  
19 clinical rationale. Respondent deviated from this standard of care by prescribing controlled  
20 substances to Patient 1, who had a diagnosis of substance use disorder, for long term use  
21 without adequate clinical rationale.

22 14. The standard of care requires a physician to perform urinary drug screens  
23 prior to prescribing controlled substances to ensure medication compliance. Respondent  
24 deviated from the standard of care by failing to perform urinary drug screens prior to  
25 prescribing controlled substances to ensure medication compliance for Patient 1.

1           15.    The standard of care for treatment of a patient with substance use disorder  
2 who experiences relapse requires a physician to refer the patient to an addiction specialist  
3 for treatment. Respondent deviated from the standard of care by failing to refer Patient 1  
4 to an addiction specialist when he experienced multiple relapses.

5           16.    The standard of care prohibits a physician from concurrently prescribing  
6 benzodiazepines, stimulants, and hypnotics for long term use without adequate clinical  
7 rationale. Respondent deviated from the standard of care for Patient 2 by concurrently  
8 prescribing benzodiazepines, stimulants, and hypnotics for long term use without adequate  
9 clinical rationale.

10          17.    The standard of care prohibits a physician from concurrently prescribing  
11 benzodiazepines and Adderall for long term use without adequate clinical rationale.  
12 Respondent deviated from the standard of care by concurrently prescribing  
13 benzodiazepines and Adderall to Patient 3 for long term use without adequate clinical  
14 rationale.

15          18.    The standard of care prohibits a physician from by prescribing Adderall at a  
16 higher than FDA recommended dosage without clinical justification. Respondent deviated  
17 from the standard of care by prescribing Adderall to Patient 3 at a higher than FDA  
18 recommended dosage without clinical justification.

19          19.    The standard of care prohibits a physician from concurrently prescribing  
20 alprazolam and clonazepam for long term use without adequate clinical rationale.  
21 Respondent deviated from the standard of care by concurrently prescribing alprazolam  
22 and clonazepam to Patient 4 for long term use without adequate clinical rationale.

23          20.    Actual patient harm was identified in that Respondent continued to prescribe  
24 stimulants to Patient 1 despite ongoing symptoms of psychosis and mania, and substance  
25 use relapses. Patient 2 demonstrates criteria for iatrogenic sedative-hypnotic and

1 stimulant use disorders, in addition to the detrimental effects of sedative overdose and  
2 adverse effects of stimulant medication exceeding the patient's tolerance on at least one  
3 occasion. Patient 3 and Patient 4 also meet the criteria for benzodiazepine dependence.

4 21. There was the potential for patient harm in that Patient 1 was at risk of  
5 additional relapses. Patient 2 was at risk of overdose, cardiac side effects and death.  
6 Patient 3 was also at risk for overdose, death as well as cardiac side effects and  
7 respiratory depression. Patient 4 was at risk overdose, death and respiratory suppression.

### 8 **Procedural History**

9 22. Effective March 15, 2021 Respondent entered into an Interim Consent  
10 Agreement for Practice Restriction that prohibited him from prescribing controlled  
11 substances in the State of Arizona.

12 23. Respondent subsequently completed Board staff pre-approved continuing  
13 medical education ("CME") courses for prescribing controlled drugs (22.75 credit hours)  
14 and for medical recordkeeping (17 credit hours). Following his completion of the CME  
15 courses, Respondent enrolled in a Practice Monitoring Program for chart reviews with a  
16 Board approved company.

17 24. Based on his completion of the above CME and enrollment in chart  
18 monitoring, the Executive Director terminated Respondent's Interim Consent Agreement  
19 for Practice Restriction, effective April 20, 2021.

### 20 **CONCLUSIONS OF LAW**

21 a. The Board possesses jurisdiction over the subject matter hereof and over  
22 Respondent.

23 b. The conduct and circumstances described above constitute unprofessional  
24 conduct pursuant to A.R.S. § 32-1401(27)(e) ("Failing or refusing to maintain adequate  
25 records on a patient.").

1 c. The conduct and circumstances described above constitute unprofessional  
2 conduct pursuant to A.R.S. § 32-1401(27)(r) (“Committing any conduct or practice that is or  
3 might be harmful or dangerous to the health of the patient or the public.”).

4 **ORDER**

5 IT IS HEREBY ORDERED THAT:

- 6 1. Respondent is issued a Letter of Reprimand.  
7 2. Respondent is placed on Probation for a period of 3 years with the following  
8 terms and conditions:

9 **a. Chart Reviews**

10 Respondent shall complete chart reviews with a Board-approved monitoring  
11 company to perform periodic chart reviews at Respondent’s expense. The chart reviews  
12 shall involve current patients’ charts for care rendered after the date Respondent returned  
13 to practice as stated herein. Based upon the chart review, the Board retains jurisdiction to  
14 take additional disciplinary or remedial action.

15 **b. Obey All Laws**

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

19 **c. Tolling**

20 In the event Respondent should leave Arizona to reside or practice outside the  
21 State or for any reason should Respondent stop practicing medicine in Arizona,  
22 Respondent shall notify the Executive Director in writing within ten days of departure and  
23 return or the dates of non-practice within Arizona. Non-practice is defined as any period of  
24 time exceeding thirty days during which Respondent is not engaging in the practice of  
25

1 medicine. Periods of temporary or permanent residence or practice outside Arizona or of  
2 non-practice within Arizona, will not apply to the reduction of the probationary period.

3 **d. Probation Termination**

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

13  
14 3. The Board retains jurisdiction and may initiate new action against  
15 Respondent based upon any violation of this Order. A.R.S. § 32-1401(27)(s)

16 DATED AND EFFECTIVE this 11<sup>th</sup> day of May, 2021.

17 ARIZONA MEDICAL BOARD

18 By Patricia E. McSorley  
19 Patricia E. McSorley  
20 Executive Director

21 **CONSENT TO ENTRY OF ORDER**

22 1. Respondent has read and understands this Consent Agreement and the  
23 stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Respondent  
24 acknowledges he has the right to consult with legal counsel regarding this matter.

25 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.

1           3.     By consenting to this Order, Respondent voluntarily relinquishes any rights to  
2 a hearing or judicial review in state or federal court on the matters alleged, or to challenge  
3 this Order in its entirety as issued by the Board, and waives any other cause of action  
4 related thereto or arising from said Order.

5           4.     The Order is not effective until approved by the Board and signed by its  
6 Executive Director.

7           5.     All admissions made by Respondent in this Order are solely for final  
8 disposition of this matter and any subsequent related administrative proceedings or civil  
9 litigation involving the Board and Respondent. Therefore, said admissions by Respondent  
10 are not intended or made for any other use, such as in the context of another state or  
11 federal government regulatory agency proceeding, civil or criminal court proceeding, in the  
12 State of Arizona or any other state or federal court.

13          6.     Notwithstanding any language in this Order, this Order does not preclude in  
14 any way any other State agency or officer or political subdivision of this state from  
15 instituting proceedings, investigating claims, or taking legal action as may be appropriate  
16 now or in the future relating to this matter or other matters concerning Respondent,  
17 including but not limited to, violations of Arizona's Consumer Fraud Act. Respondent  
18 acknowledges that, other than with respect to the Board, this Order makes no  
19 representations, implied or otherwise, about the views or intended actions of any other  
20 state agency or officer or political subdivisions of the State relating to this matter or other  
21 matters concerning Respondent.

22          7.     Upon signing this agreement, and returning this document (or a copy thereof)  
23 to the Board's Executive Director, Respondent may not revoke the consent to the entry of  
24 the Order. Respondent may not make any modifications to the document. Any  
25



1 modifications to this original document are ineffective and void unless mutually approved  
2 by the parties.

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

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

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

11 11. Any violation of this Order constitutes unprofessional conduct and may result  
12 in disciplinary action. A.R.S. § § 32-1401(27)(s) ("[v]iolating a formal order, probation,  
13 consent agreement or stipulation issued or entered into by the board or its executive  
14 director under this chapter.") and 32-1451.

15 12. Respondent acknowledges that, pursuant to A.R.S. § 32-2501(16), he  
16 cannot act as a supervising physician for a physician assistant while his license is  
17 restricted.

18 13. *Respondent has read and understands the conditions of probation.*

19  
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21 \_\_\_\_\_  
22 HOWARD D. TOFF, M.D.

DATED: 5/18/21

22 EXECUTED COPY of the foregoing mailed  
23 this 11<sup>th</sup> day of June, 2021 to:

24 Michele G. Thompson, Esq.  
25 Udall Law Firm, LLP  
4801 East Broadway Boulevard, Suite 400  
Tucson, Arizona 85711-3609  
Attorney for Respondent



1 ORIGINAL of the foregoing filed  
2 this 11<sup>th</sup> day of June, 2021 with:

3 Arizona Medical Board  
4 1740 West Adams, Suite 4000  
5 Phoenix, Arizona 85007

6 Michelle Robes  
7 Board staff

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