

1 4. An investigational interview with Respondent revealed the following:

2 a. Owners of an auto body parts business in Mesa approached Respondent in
3 May or June of 2000 and asked him to participate in the practice of medicine via the
4 internet. Initially Respondent prescribed medications from "MYPRIVATEDOC.com" and
5 was paid \$20.00 for each internet consultation. Visitors to the web site filled out a
6 questionnaire regarding their medical history and their medical complaint. Respondent
7 received the forms via the internet and also received a schedule of when the patients
8 would be calling for an evaluation. Respondent initially evaluated 10 to 15 patients per
9 day, spending approximately 5 to 10 minutes with each patient. By December 2000 the
10 internet consultations increased to approximately 30 per day.

11 b. Respondent made no effort to validate the information provided to him via
12 the internet. Also, MYPRIVATEDOC.com requested verification of patient identity through
13 picture identification, but Respondent did not independently verify patient identity.
14 Respondent had not taken any courses or continuing medical education in chronic pain
15 management or the identification of drug seeking behavior. Respondent did not perform
16 any physical examinations of the patients nor did he request or obtain medical records
17 from other treating physicians. Respondent did not believe he had established a doctor-
18 patient relationship with any of the internet patients. The majority of prescriptions issued
19 by the Respondent were for a thirty-day supply of controlled substance medications, with a
20 maximum of two refills.

21 c. Respondent terminated his relationship with MYPRIVATEDOC.com in
22 February 2001. During the time he was associated with MYPRIVATEDOC.com
23 Respondent received approximately \$52,000. From April 2001 through August 2001
24 Respondent worked with the internet web site "MEDSWORLDWIDE.com". The referral
25 and evaluation process used by Respondent at MEDSWORLDWIDE.com was essentially

1 the same as with MYPRIVATEDOC.com. Respondent was paid \$70 per consultation by
2 MEDSWORLDWIDE.com and in total received approximately \$36,000. In August 2001
3 when Respondent severed his relationship with MEDSWORLDWIDE.com he started his
4 own web site "EXPRESSMEDCARE.com".

5 d. Respondent associated with a Florida pharmacy that issued the medications
6 prescribed on EXPRESSMEDCARE.com. Respondent charged \$100 to \$125 per
7 consultation. Respondent estimated that he consulted with approximately 900 patients
8 until December 21, 2001 when the DEA confiscated his computer.

9 e. Respondent did not maintain any medical records on the patients he
10 prescribed to over the internet.

11 5. Respondent originally appeared before the Board for a formal interview in
12 June 2002. Respondent was asked how his conduct fit into what reasonably prudent
13 physicians would consider the prudent and reasonable practice of medicine. Respondent
14 testified that another physician he has known for over 18 years and with whom he worked
15 on other business ventures in the past recommended internet prescribing to him.
16 Respondent stated that when he was approached to do internet prescribing he had just
17 lost his privileges at Mesa Lutheran Hospital, a hospital where 90% of his patient volume
18 was generated. According to Respondent, the physician who recommended he engage in
19 this practice knew Respondent needed help generating income.

20 6. Respondent testified that he was unaware of any law that said he could not
21 prescribe without doing a physical examination and believed the practice was harmless.
22 Respondent stated he was assured that attorneys would be consulted to guide the
23 business in the right path in terms of regulatory boards and that there were no laws or
24 statutes regarding this practice. Respondent noted that another physician who was
25 considering engaging in this conduct stated that he was going to call the Board to see if it

1 was permissible. When Respondent saw that the other physician was prescribing over the
2 internet he assumed that the Board had told the other physician that it was acceptable.

3 7. Respondent testified that he was disturbed when towards the end of
4 February 2001 the owners of an internet web site informed him that the DEA had visited
5 with them and given them the option of voluntarily shutting down, or being shut down by
6 the DEA. The owner of the pharmacy Respondent used through MYPRIVATEDOC.com
7 informed Respondent that the DEA had also visited him and questioned him.

8 8. Respondent was asked what educational material he had read that supports
9 the ongoing prescribing of the types of medication he had prescribed without a direct
10 patient evaluation. Respondent stated that he had not prescribed medication on an
11 ongoing basis and had only done so for patients on a temporary basis while they
12 established with a local physician. The Board noted that the record of prescriptions refilled
13 by Respondent did not support this contention.

14 9. Respondent testified that he did not do any primary source verification of the
15 patient's complaint, for instance, he did not review records, reports of tests, physical
16 therapy consultations and the like. Respondent was unable to satisfactorily explain how
17 he distinguished between drug seeking patients and patients who may have had legitimate
18 need for pain medication. According to Respondent, he became involved in internet
19 prescribing because of his interest in helping the community and his concern for internet
20 patients, most of whom had either lost their insurance, no longer had a primary care
21 physician because of a physician's retirement or relocation, or were unable to find a
22 physician to satisfactorily treat their pain.

23 10. Respondent testified that he discontinued prescribing over the internet in
24 December 2001 when the DEA approached him. Respondent was asked to reconcile his
25 statements that he started prescribing over the internet out of concern for patients who

1 had no insurance or were in transit and did not have a local physician with his having
2 started this practice after he lost his privileges and a large portion of his income.
3 Respondent stated that he been experiencing financial problems long before he lost his
4 privileges and started to prescribe over the internet.

5 11. Respondent was unable to list the side effects of amitriptyline, a drug he
6 prescribed.

7 12. Respondent testified that he stated that he set up his own web site after
8 receiving complaints from patients that it took a long time to get the medication from the
9 other websites and that MEDSWORLDWIDE.com told him that the DEA approached
10 MYPRIVATEDOC.com because of the fee splitting arrangement between the web site and
11 the pharmacy that filled the prescriptions. Also, Respondent testified that, although
12 MYPRIVATEDOC.com was charging the patients \$100 per consultation, he was only
13 being paid \$20 per consultation. When Respondent prescribed from his own web site he
14 charged \$100 to \$125 per consultation. Respondent testified that when he started his own
15 web site he did not contract with a pharmacy, but used the same Florida pharmacy as
16 MEDSWORLDWIDE.com. According to Respondent, he did not fee split with the
17 pharmacy because he believed it was illegal.

18 13. At the conclusion of the June 5, 2002 interview, the Board expressed
19 concern that Respondent appeared to have a relatively poor understanding of the
20 management of chronic pain and that Respondent was in a high stress situation with
21 relatively little understanding of the basic pharmacology of the drugs he was prescribing.
22 Accordingly, the Board continued the interview and ordered Respondent to undergo a
23 clinical competency evaluation ("PLAS") with 60 days. Respondent also agreed not to
24 prescribe any scheduled medications to patients outside of his regular obstetric and
25 gynecological practice until further order of the Board.

1 14. The Board resumed Respondent's formal interview on February 12, 2003.

2 15. The Board noted that the PLAS evaluation showed that Respondent
3 performed satisfactorily in obstetrics and gynecology, his area of specialty, and that he
4 was deficient in pharmacologic therapies outside his specialty and in ethics and
5 communication.

6 16. Respondent indicated that his current practice was a solo, office-based,
7 obstetrics and gynecology practice. Respondent noted that he did not currently have staff
8 privileges at any hospital, but that privileges at certain hospitals were pending the
9 resolution of this matter. Respondent testified that, because he does not have hospital
10 privileges, he transfers care of obstetric patients to another group of physicians in
11 approximately the 35th or 36th week of the patient's pregnancy. Respondent noted that
12 there had been no action against his DEA certificate. Respondent testified that since the
13 June formal interview he had not prescribed controlled substances to any patient outside
14 of his obstetrics and gynecology practice and, even then, it is a very rare situation that his
15 patients require controlled substances unless they are post-surgical patients.

16 17. Respondent noted that the PLAS evaluation was very objective and he
17 gained from it. Respondent stated that at one point during the evaluation he went through
18 at least five hours of testing involving many areas of medicine. Respondent testified that,
19 from when the Board ordered the evaluation in June, he spent time preparing for the
20 evaluation and that he has already taken the Physician Assessment Clinical Education
21 Program ("PACE") prescribing course because it is very important to him to understand
22 the gravity of the Board's concern. Respondent stated that he took the PACE prescribing
23 course after attending the October Board where PACE made a presentation to the Board
24 that included a description of the course.

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1 18. Respondent testified that he believes he is involved in medical care to be a
2 benefit to society and he took a very superficial, naïve approach to chronic pain
3 management, but he did so to help working class people get care.

4 19. Respondent testified that, because he had only been informed of the PLAS
5 results within the last week, he had not taken any other continuing medical education
6 ("CME") courses in areas noted as weaknesses in the PLAS evaluation. The Board noted
7 that it was impressed with the evaluation and that it was obvious that Respondent had
8 worked hard for it. Respondent was asked how much CME he had taken in the last year.
9 Respondent noted that he had over 60 CME credits, including credits in medical
10 complications associated with obstetrics and gynecology; endocrinology and infertility;
11 urogynecology; complications of gynecologic surgery; the latest information in obstetrics in
12 terms of evaluating premature labor, retardation and complications in pregnancy such as
13 hypertension and diabetes. Respondent also noted that he took courses in migraine
14 headache management and congestive heart failure.

15 20. Respondent testified that what he did was wrong and he should have never
16 gotten involved with internet prescribing, based especially on what he has learned through
17 the prescribing CME course that pain management takes a comprehensive evaluation and
18 a longitudinal approach, an on-going approach to evaluating patients to make sure their
19 care is appropriate. Respondent stated that he never even considered the possibility of
20 diversion or abuse by the internet patients.

21 21. The standard of care for the management of prescribing medications, with
22 the exception of emergent situations, requires there be a doctor-patient relationship
23 established on a face-to-face basis before prescribing a medication.

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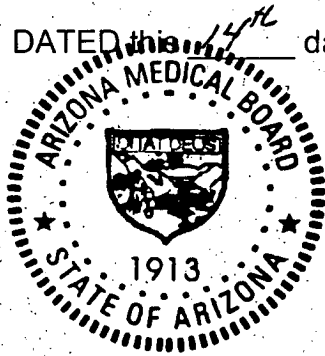
1 d. Respondent shall submit quarterly declarations under penalty of perjury on
2 forms provided by the Board, stating whether there has been compliance with all
3 conditions of probation. The declarations shall be submitted on or before the 15th of
4 March, June, September and December of each year, beginning on or before December
5 15, 2003.

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

7 Respondent is hereby notified that he has the right to petition for a rehearing or
8 review. The petition for rehearing or review must be filed with the Board's Executive
9 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09. The
10 petition for rehearing or review must set forth legally sufficient reasons for granting a
11 rehearing or review. A.A.C. R4-16-102. Service of this order is effective five (5) days
12 after date of mailing. If a motion for rehearing or review is not filed, the Board's Order
13 becomes effective thirty-five (35) days after it is mailed to Respondent.

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

16 DATED this 14th day of May, 2003.



17 ARIZONA MEDICAL BOARD

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21 BARRY A. CASSIDY, Ph.D., PA-C
22 Executive Director

23 ORIGINAL of the foregoing filed this
24 14th day of MAY, 2003 with:

25 The Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

1 Executed copy of the foregoing
2 mailed by U.S. Certified Mail this
3 14th day of MAY, 2003, to:

4 Dan Jantsch
5 Olson, Jantsch & Bakker PA
6 7243 North 16th Street
7 Phoenix, Arizona 85020-7250

8 Executed copy of the foregoing
9 mailed by U.S. Mail this
10 14th day of MAY, 2003, to:

11 Marvin Gibbs, M.D.
12 2034 East Southern Avenue
13 Suite U
14 Tempe, Arizona 85282-7519

15 Copy of the foregoing hand-delivered this
16 14th day of MAY, 2003, to:

17 Christine Cassetta
18 Assistant Attorney General
19 Sandra Waitt, Management Analyst
20 Compliance
21 Investigations (Investigation File)
22 Arizona Medical Board
23 9545 East Doubletree Ranch Road
24 Scottsdale, Arizona 85258

25 Brenda Holub