

1 BEFORE THE BOARD OF MEDICAL EXAMINERS
2 IN THE STATE OF ARIZONA

3 In the Matter of

4 **GREGORY PORTER, M.D.**

5 Holder of License No. 14879
6 For the Practice of Medicine
7 In the State of Arizona.

Board Case No. MD-01-0535

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

(Letter of Reprimand & Probation)

8 On June 6, 2002, Gregory Porter, M.D., ("Respondent") appeared before a Review
9 Committee ("Review Committee") of the Arizona Board of Medical Examiners ("Board")
10 with legal counsel, Thomas Slutes, for a formal interview pursuant to the authority vested
11 in the Review Committee by A.R.S. § 32-1451(Q). The matter was referred to the Board
12 for consideration at its public meeting on August 8, 2002. After due consideration of the
13 facts and law applicable to this matter, the Board voted to issue the following findings of
14 fact, conclusions of law and order.
15

16 **FINDINGS OF FACT**

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

19 2. Respondent is the holder of License No. 14879 for the practice of medicine
20 in the State of Arizona.

21 3. The Board initiated case number MD-01-0535 after receiving a complaint
22 concerning Respondent's care and treatment of a patient ("Patient") at Carondelet St.
23 Mary's Hospital ("Hospital") in Tucson, Arizona. According to the complainant,
24 Respondent arrived at the Hospital in response to a telephone request and presented in
25 a state of intoxication.

1 4. Another physician who realized Respondent's state intervened in Patient's
2 care. There was no harm to Patient.

3 5. During the course of the Board's investigation of the complaint, Respondent
4 participated in an investigational interview. As a result of the interview the Board
5 recommended that Respondent enter into in-patient treatment for alcohol dependency
6 and participate in the Board's Monitored Aftercare Care Program ("MAP") upon
7 discharge. Respondent signed an Interim Consent Agreement agreeing to the Board's
8 recommendations and successfully completed in-patient treatment and entered the MAP
9 program. The Interim Consent Agreement was vacated in March 2002 and Respondent
10 has voluntarily been participating in a monitoring program on a private basis and has
11 been fully compliant with the requirements of the program.

12 6. Respondent testified at the formal interview that he was not on call the
13 evening he was telephoned. Respondent stated that he received a call from Patient's
14 son who informed him that he and Patient has been waiting in the emergency room for
15 five hours without being seen. Respondent stated that he had been at a dinner party that
16 evening and his wife drove him to the Hospital. Respondent indicated he had had
17 between 3 and 4 beers that evening over a three-hour period, but did not feel that he was
18 intoxicated. Respondent testified that he saw Patient, examined her, wrote a note and
19 left.

20 7. Respondent stated that it was bad judgment to go to the Hospital after
21 having consumed some alcohol, but he did not believe he was intoxicated.

22 8. In response to an inquiry as to why he had his wife drive him to the
23 Hospital, Respondent indicated that he felt it would be inappropriate for him to drive after
24 consuming 3 and 4 beers.

25

1 9. Respondent agreed that if he felt too impaired to drive it was bad judgment
2 for him to go to the Hospital.

3 10. Respondent testified that he currently works for less than 40 hours per
4 week and that his practice is limited to office visits and he is not currently attending
5 patients who are hospitalized.

6 **CONCLUSIONS OF LAW**

7 1. The Board of Medical Examiners of the State of Arizona possesses
8 jurisdiction over the subject matter hereof and over Respondent.

9 2. The Board has received substantial evidence supporting the Findings of
10 Fact described above and said findings constitute unprofessional conduct or other
11 grounds for the Board to take disciplinary action.

12 3. The conduct and circumstances above in paragraphs 6 through 9 and 11
13 constitute unprofessional conduct pursuant to A.R.S. § 32-1401 (25)(f) "[h]abitual
14 intemperance in the use of alcohol or habitual substance abuse."

15 **ORDER**

16 Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS
17 HEREBY ORDERED that:

18 1) Respondent is issued a Letter of Reprimand for presenting at the hospital
19 and examining a patient while impaired by alcohol; and

20 2) Respondent is placed on probation for five years with the following terms
21 and conditions:

22 a. Respondent shall submit quarterly declarations under penalty of perjury on
23 forms provided by the Board, stating whether there has been compliance with all
24 conditions of probation. The declarations shall be submitted on or before the 15th of
25

1 March, June, September and December of each year, beginning on or before December
2 15, 2001.

3 **b.1. Participation.** Respondent shall promptly enroll in and participate in the
4 Board's substance abuse treatment and rehabilitation program ("MAP"). As part of his
5 participation in MAP, Respondent shall cooperate with Board staff and contracting MAP
6 supervisors. Respondent shall remain in MAP for a period of five years from the effective
7 date of this Order.

8 **2. Group Therapy.** Respondent shall attend MAP group therapy sessions
9 one time per week for the duration of this Order, unless excused by the group therapist
10 for good cause such as illness or vacation. Respondent shall instruct the MAP group
11 therapist to release to the Board, upon its request, all records relating to Respondent's
12 treatment, and to submit monthly reports to the Board regarding attendance and
13 progress. The reports must be submitted on or before the 10th day of each month.

14 **3. 12 Step of Self-Help Group Meetings**

15 A. Respondent shall attend ninety 12-Step meetings or other self-help
16 group meetings appropriate for substance abuse and approved by the Board for a period
17 of ninety days beginning not later than either (a) the first day following his discharge from
18 chemical dependency treatment or (b) the effective date of this Order.

19 B. Following completion of the ninety meetings in ninety days, Respondent
20 shall participate in a 12-Step recovery program of other self-help program appropriate for
21 substance abuse as recommended by the MAP group therapist and approved by the
22 Board. Respondent shall attend a minimum of three 12-Step or other self-help program
23 meetings per week.

24 **4. Board-Approved Primary Care Physician.** Respondent shall promptly
25 obtain a primary care Physician ("PCP") and shall submit the name of the PCP to Board
Staff in writing for approval. The PCP shall be in charge of providing and coordinating
Respondent's medical care and treatment. Except in an *Emergency*, Respondent shall

1 obtain Respondent's medical care and treatment. Except in an *Emergency*, Respondent
2 shall obtain his medical care and treatment only from the PCP and from health care
3 providers to whom the PCP refers Respondent from time to time. Respondent shall
4 request that the PCP document all referrals in the medical record. Respondent shall
5 promptly inform the PCP of Respondent's rehabilitation efforts and provide a copy of this
6 Order to the PCP. Respondent shall also inform all other health care providers who
7 provide medical care or treatment that Respondent is participating in MAP.

8 **5. Medication.**

9 A. Except in an *Emergency*, Respondent shall take no *Medication*
10 unless the *Medication* is prescribed by the PCP or other health care provider to whom the
11 PCP makes a referral. Respondent shall not self-prescribe any *Medication*.

12 B. If a controlled substance is prescribed, dispensed, or is administered
13 to Respondent by any person other than the PCP, Respondent shall notify the PCP in
14 writing within 48 hours. The notification shall contain all information required for the
15 medication log entry specified in Paragraph 6. Respondent shall request that the
16 notification be made a part of the medical record. This paragraph does not authorize
17 Respondent to take any *Medication* other than in accordance with Paragraph 5A.

18 **6. Medication Log.** Respondent shall maintain a current legible log of all
19 *Medication* taken by or administered to Respondent, and shall make the log available to
20 the Board and its Staff upon request. For *Medication* (other than controlled substances)
21 taken on an on-going basis, Respondent may comply with this paragraph by logging the
22 first and last administration of the *Medication* and all changes in dosage or frequency.

The log, at a minimum, shall include the following:

- 23 a. Name and dosage of *Medication* taken or administered;
- 24 b. Date taken or administered;
- 25 c. Name of prescribing or administering Physician;
- d. Reason *Medication* was prescribed or administered.

1 This paragraph does not authorize Respondent to take any *Medication* other than in
2 accordance with paragraph 5.

3 **7. No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol or
4 any food or other substance containing poppy seeds or alcohol.

5 **8. Biological Fluid Collection.**

6 A. During all times that Respondent is physically present in the State of
7 Arizona and such other times as Board Staff may direct, Respondent shall promptly
8 comply with requests from Board Staff, the MAP group therapist, or MAP Director to
9 submit to witnessed biological fluid collection. If Respondent is directed to contact an
10 automated telephone message system to determine when to provide a specimen,
11 Respondent shall do so within the hours specified by Board Staff. For the purposes of
12 this paragraph, in the case of an in-person request, "promptly comply" means
13 "immediately". In the case of a telephonic request, "promptly comply" means that, except
14 for good cause shown, Respondent shall appear and submit to specimen collection not
15 later than two hours after telephonic notice to appear is given. The Board in its sole
16 discretion shall determine good cause.

17 B. Respondent shall provide Board Staff in writing with one telephone
18 number that shall be used to contact Respondent on 24 hour per day/seven day per
19 week basis to submit to biological fluid collection. For the purposes of this section,
20 telephonic notice shall be deemed given at the time a message to appear is left at the
21 contact telephone number provided by Respondent. Respondent authorizes any person
22 or organization conducting tests on the collected samples to provide testing results to the
23 Board and the MAP Director.

24 C. Respondent shall cooperate with collection site personnel regarding
25 biological fluid collection. Repeated complaints from collection site personnel regarding
Respondent's lack of cooperation regarding collection may be grounds for termination
from MAP.

1 **9. Payment for Services.** Respondent shall pay for all costs, including
2 personnel and contractor costs, associated with participating in MAP at the time
3 service is rendered, or within 30 days of each invoice sent to Respondent.

4 **10. Examination.** Respondent shall submit to mental, physical, and medical
5 competency examinations at such times and under such conditions as directed by the
6 Board to assist the Board in monitoring Respondent's ability to safely engage in the
7 practice of medicine and compliance with the terms of this Order.

8 **11. Treatment.** Respondent shall submit to all medical, substance abuse, and
9 mental health care and treatment ordered by the Board, or recommended by the MAP
10 Director.

11 **12. Obey All Laws.** Respondent shall obey all federal, state and local laws,
12 and all rules governing the practice of medicine in the State of Arizona.

13 **13. Interviews.** Respondent shall appear in person before the Board and its
14 Staff and committees for interviews upon request, upon reasonable notice.

15 **14. Address and Phone Changes, Notice.** Respondent shall immediately
16 notify the Board in writing of any change in office or home addresses and telephone
17 numbers. Respondent shall provide Board Staff at least three business days advance
18 written notice of any plans to be away from office or home for more than five (5)
19 consecutive days. The notice shall state the reason for the intended absence from home
20 or office, and shall provide a telephone number to contact Respondent.

21 **15. Relapse, Violation.** In the event Respondent violates any term of this
22 Order, Respondent's license will be summarily suspended. Alternatively, Respondent
23 may request Surrender of License. If Respondent's license is revoked, Respondent may
24 not reapply for a license for 5 years.

24 **16. Notice Requirements.**

25 **(a)** Respondent shall immediately provide a copy of this Order to all
hospitals and free standing surgery centers at which Respondent has any privileges.

1 Within 30 days of the date of the Order, Respondent shall provide the Board with a
2 signed statement that the Respondent has complied with this notification requirement.

3 (b) Respondent is further required to notify, in writing, all hospitals and free
4 standing surgery centers at which Respondent has any privileges of a chemical
5 dependency relapse, use of drugs or alcohol in violation of this Order and/or entry into a
6 treatment program. Respondent shall provide the Board, within seven days of any of
7 these events, written confirmation that Respondent has complied with this notification
8 requirement.

9 (c) Respondent shall immediately submit to the Board, under penalty of
10 perjury, on a form provided by the Board, the name(s) and address(es) of all employers
11 and all hospitals and free-standing surgery centers at which Respondent currently holds
12 privileges to practice. Respondent is further required to, under penalty of perjury, on a
13 form provided by the Board, immediately notify the Board of any changes in his
14 employment and of any hospitals and freestanding surgery centers at which Respondent
15 gains privileges after the effective date of this Order.

16 17. **Public Record.** This Order is a public record document and may be
17 disclosed to the extent required by law.

18 18. **Out-of State.** In the event Respondent resides or practices medicine in a
19 state other than Arizona, Respondent shall participate in the physician rehabilitation
20 program sponsored by that state's medical licensing authority or medical society.
21 Respondent shall cause the other state's program to provide written reports to the Board
22 regarding Respondent's attendance, participation, and monitoring. The reports are due
23 on or before the 15th day of March and September of each year, until the Board
24 terminates this requirement in writing.

24 II. **Definitions**

25 1. **"Medication"** means "prescription-only drug, controlled substance, and
over-the counter preparation, other than plain aspirin and plain acetaminophen."

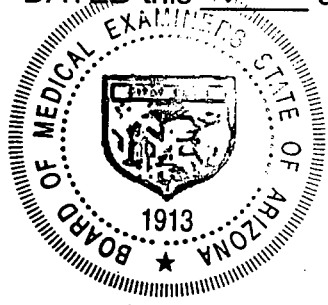
1 2. **"Emergency"** means "a serious accident or sudden illness that, if not
2 treated immediately, may result in a long-term medical problem or loss of life."

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

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

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

13 DATED this 9th day of August, 2002.



14 BOARD OF MEDICAL EXAMINERS
15 OF THE STATE OF ARIZONA

16 By Barry Cassidy
17 BARRY A. CASSIDY, Ph.D, PA-C
18 Executive Director
19

20 ORIGINAL of the foregoing filed this
21 9 day of August, 2002 with:

22 The Arizona Board of Medical Examiners
23 9545 East Doubletree Ranch Road
24 Scottsdale, Arizona 85258

25 Executed copy of the foregoing
 mailed by U.S. Certified Mail this
 9 day of August, 2002, to:

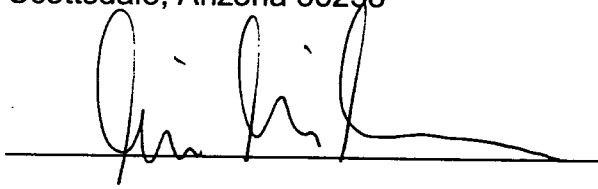
1 Tom Slutes, Esquire
2 Slutes Sakrison & Hill, PC
3 33 N. Stone Ave., Suite 1000
4 Tucson, Arizona 85701-1489

4 Executed copy of the foregoing
5 mailed by U.S. Mail this
6 9 day of August, 2002, to:

6 Gregory J. Porter, M.D.
7 1701 W Saint Marys Rd # C-117
8 Tucson AZ 85745-2621

9
10 Copy of the foregoing hand-delivered this
11 9 day of August, 2002, to:

11 Christine Cassetta
12 Assistant Attorney General
13 Sandra Waitt, Management Analyst
14 Lynda Mottram, Senior Compliance Officer
15 Investigations (Investigation File)
16 Arizona Board of Medical Examiners
17 9545 East Doubletree Ranch Road
18 Scottsdale, Arizona 85258

16 

19
20
21
22
23
24
25