BEFORE THE BOARD OF MEDICAL EXAMINERS

#### IN THE STATE OF ARIZONA

In the Matter of

EDGAR M. CLEAVER, M.D.

Holder of License No. **16035** For the Practice of Medicine In the State of Arizona.

Case No. MD-96-0068

CONSENT AGREEMENT FOR A PRACTICE RESTRICTION

## **CONSENT AGREEMENT**

By mutual agreement and understanding, between the Arizona Board of Medical Examiners ("Board") and Edgar M. Cleaver, M.D. ("Respondent"), the parties agreed to the following disposition of this matter at the October 11, 2001 meeting.

- 1. Respondent acknowledges that he has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order. Respondent acknowledges that he understands he has the right to consult with legal counsel regarding this matter and has done so or chooses not to do so.
- 2. Respondent understands that by entering into this Consent Agreement for the issuance of the foregoing Order, he voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement and the Order in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Order.
- 3. Respondent acknowledges and understands that this Consent Agreement and the Order will not become effective until approved by the Board and signed by its Executive Director.

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- 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.
- Respondent acknowledges and agrees that, although the Consent 5. Agreement has not yet been accepted by the Board and issued by the Executive Director, upon signing this agreement, and returning this document (or a copy thereof) to the Board's Executive Director, Respondent may not revoke his acceptance of the Consent Agreement and 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.
- Respondent further understands that this Consent Agreement and Order, 6. once approved and signed, shall constitute a public record document that may be publicly disseminated as a formal action of the Board.
- If any part of the Consent Agreement and Order is later declared void or 7. otherwise unenforceable, the remainder of the Order in its entirety shall remain in force and effect.

Edgat M. Cleaver, M.D.

Dated: 8-13-0

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

FINDINGS OF FACT

- 2. Respondent is the holder of License No. 16305 for the practice of allopathic medicine in the State of Arizona.
- 3. The Board initiated case number MD-96-0068 on November 20, 1995, upon receiving notice from the American Medical Association that the Oklahoma State Board of Medical Licensure ("Oklahoma Board") had taken action against Respondent.
- 4. On January 24, 1996, the Board received from the Oklahoma Board a copy of the "Voluntary Submittal to Jurisdiction and Order" dated May 5, 1995, and the "Final Order" dated May 22, 1995, both issued by the Oklahoma Board.
- 5. Respondent voluntarily signed the agreement, thus admitting to the facts contained within the documents. According to the documents, Respondent, over a period of three years, prescribed controlled substances for reasons other than medically accepted therapeutic purposes. Respondent also prescribed controlled substances to three patients who were addicted, habituated or chemically dependent. The documents further state that Respondent, between 1994 and 1995, engaged in a romantic relationship with patient J.L., who was drug dependant, and Respondent prescribed controlled substance to patient J.L.
- 5. The Oklahoma Board Reprimanded Respondent and placed him on probation for five years which required him to surrender his state and federal prescribing permits, pay all costs associated with the investigation, provide notification to all health care institutions at which he had privileges, and immediately terminate his relationship with patient J.L.
- 6. On September 6, 1996, Board staff submitted the matter to an outside medical consultant for review. The medical consultant found that Respondent admitted to prescribing controlled substances to patient J.L, but denied having a sexual relationship

with patient J.L. Respondent also admitted to prescribing controlled substances to patients for reasons other than therapeutic purposes.

- 7. During the January 1997 public meeting, the Board voted to offer Respondent an Interim Stipulation and Order not to practice in Arizona until acquiring the Board's approval to do so. On March 11, 1997, Respondent entered into the Interim Stipulation and Order with the Board.
- 8. On March 26, 2001, Respondent requested that the Board remove the restriction on his Arizona license and submitted documentation verifying that his Oklahoma probation ended in May 2000. However, Respondent failed to provide evidence to indicate that he has taken any remedial measures or made any rehabilitation efforts to cure the statutory violations he committed in Oklahoma.
- 9. Richard Zonis, M.D., the Board's Chief Medical Consultant, reviewed this matter and agreed that Respondent has failed to provide any evidence that would warrant the termination of the Interim Stipulation and Order. Dr. Zonis concluded that Respondent should not be allowed to practice medicine in Arizona at this time.
- 10. Respondent engaged in unprofessional conduct as defined by both Oklahoma and Arizona statutes.

# **CONCLUSIONS OF LAW**

- The Board possesses jurisdiction over the subject matter hereof and over Respondent.
- 2. The conduct and circumstances described above in paragraphs 3 to 10 constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(o) ("[a]ction taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine, his medical incompetence or for unprofessional conduct as defined by that jurisdiction and

which corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction.").

- 3. The conduct and circumstances described above in paragraphs 3 to 10 constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(z)("[s]exual intimacies with a patient.")
- 4. The conduct and circumstances described above in paragraphs 3 to 10 constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(j) ("[p]rescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes").

### <u>ORDER</u>

### IT IS HEREBY ORDERED THAT:

- Respondent shall not practice medicine in the state of Arizona until he meets
   with the Board and affirmatively receives the Board's approval to do so.
- 2. Prior to submitting his request to practice medicine in Arizona, Respondent must undergo any combination of staff approved physical examinations, psychiatric and/or psychological evaluations. These evaluations are at the Respondent's own expense. The evaluators shall provide written confidential reports to the Board. The Board evaluators and the evaluators reports are prepared solely for the benefit of the Board; and therefore the Board evaluators are not treating Respondent as a patient. Respondent shall authorize the release to Board staff and/or Board Evaluators, upon request, all records relating to his previous medical or psychological history. The Board may use the evaluators' reports to determine Respondent's ability to practice medicine in Arizona.

1	3. The Board retains jurisdiction and may initiate new action based upon a
2	violation of this Order.
3	4. This Order is final disposition of case number MD-96-0068.
4	DATED AND EFFECTIVE this day of, 2001.
5	BOARD OF MEDICAL EXAMINERS
6	OF THE STATE OF ARIZONA
7	(SEAL)
8	By Claudia Font
9	Executive Director
10	TOM ADAMS Deputy Director
11	ORIGINAL of the foregoing filed this
12	12 day of <u>October</u> , 2001 with:
13	The Arizona Board of Medical Examiners
14	9545 East Doubletree Ranch Road Scottsdale, AZ 85258
15	EXECUTED COPY of the foregoing mailed by
16	Certified Mail this 12 day of <u>October</u> , 2001 to:
17	Edgar M. Cleaver, M.D. 1795 E. 71 <sup>st</sup> St.
18	Tulsa, OK 74136
19	EXECUTED COPY of the foregoing hand-delivered to each of the following
20	this 12 day of October, 2001, to:
21	Christine Cassetta, Assistant Attorney General
22	Sandra Waitt, Management Analyst Lynda Mottram, Compliance Officer
23	Lisa Maxie-Mullins, Legal Coordinator (Investigation File) Arizona Board of Medical Examiners
24	9545 E. Doubletree Ranch Road Scottsdale, AZ 85258
25	In h.h.