

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **ANDREW J. APPEL, M.D.**

4 Holder of License No. 33956
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Board Case No. MD-07-0504A

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

(Letter of Reprimand)

7 The Arizona Medical Board ("Board") considered this matter at its public meeting on June
8 5, 2008. Andrew Appel, M.D., ("Respondent") appeared before the Board with legal counsel
9 Stephen Myers for a formal interview pursuant to the authority vested in the Board by A.R.S. §
10 32-1451(H). The Board voted to issue Findings of Fact, Conclusions of Law and Order after due
11 consideration of the facts and law applicable to this matter.

12 **FINDINGS OF FACT**

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

15 2. Respondent is the holder of License No. 33956 for the practice of allopathic
16 medicine in the State of Arizona.

17 3. The Board initiated case number MD-07-0504A after receiving a complaint
18 regarding Respondent's care and treatment of a seventy-six year-old male patient ("LK") alleging
19 failure to properly perform a surgical procedure involving a compression fracture and post-
20 surgical foot drop.

21 4. LK was evaluated in Respondent's office for a burst fracture at L4 and was
22 subsequently admitted to the hospital due to increasing pain and inability to walk secondary to
23 pain. On September 29, 2005, Respondent performed a surgical procedure involving an open
24 reduction, internal fixation, and decompression laminectomy of LK's L4 fracture and fusion of L3
25 and L5 with pedicle screws. Following the surgery, LK, a right leg amputee, complained to

1 Respondent of left foot weakness. On October 2, 2005, Respondent noted that LK had no motor
2 function of the foot or ankle.

3 5. A CT scan was ordered and Respondent documented in his notes that the
4 hardware appeared to be adequate. However, Respondent admitted during his testimony that
5 the CT scan, in fact, appeared abnormal and, therefore, he returned LK to surgery on October 2,
6 2005, to re-explore. During the second surgery, Respondent visualized the spinal canal and
7 could not feel the screw. He removed the pedicle screw at L5 and then replaced it in the same
8 place. He palpated and visualized the spinal canal and nerve root prior to closure. Based upon
9 his findings during this procedure, Respondent believed that the screw was properly placed.

10 6. The CT scan and a subsequent MRI scan showed that the pedicle screw was not
11 properly placed but was medial to the pedicle and in the neural foramina. Although Respondent
12 admits the CT scan shows mal-placement of the screw, and that the CT scan is the "gold
13 standard" to evaluate pedicular placement, he maintains that the screw was not mal-placed.

14 7. The standard of care requires the physician, during surgery, to place a pedicle
15 screw in the pedicle.

16 8. Respondent deviated from the standard of care by failing to place a pedicle screw
17 in the pedicle, resulting in LK's foot drop and decreased sensation due to nerve injury.

18 9. A physician is required to maintain adequate medical records. An adequate
19 medical record means a legible record containing, at a minimum, sufficient information to identify
20 the patient, support the diagnosis, justify the treatment, accurately document the results, indicate
21 advice and cautionary warnings provided to the patient and provide sufficient information for
22 another practitioner to assume continuity of the patient's care at any point in the course of
23 treatment. A.R.S. § 32-1401(2). Respondent's records were inadequate because they were
24 incomplete and inaccurate.

25

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

3 DATED this 9th day of October, 2008.



THE ARIZONA MEDICAL BOARD

By *Lisa Wynn*
LISA WYNN
Executive Director

8 ORIGINAL of the foregoing filed this
9 9th day of October, 2008 with:

10 Arizona Medical Board
11 9545 East Doubletree Ranch Road
12 Scottsdale, Arizona 85258

12 Executed copy of the foregoing
13 9th day of October, 2008, to:
14 mailed by U.S. Mail this

14 Stephen W. Myers
15 MYERS & JENKINS
16 One E. Camelback Road, Suite 500
17 Phoenix, Arizona 85012

17 Andrew J. Appel, M.D.
18 Address of Record

18 *Chris Bump*
19

20 #301147

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2
3 In the Matter of

4 **ANDREW J. APPEL, M.D.**

5 Holder of License No. **33956**
6 for the Practice of Allopathic Medicine
7 In the State of Arizona.

CASE NO. MD-07-0504A

**ORDER DENYING REHEARING OR
REVIEW**

8 At its public meeting on December 3-4, 2008, the Arizona Medical Board ("Board")
9 considered a Petition for Rehearing or Review filed by Andrew J. Appel, M.D. ("Respondent").
10 Respondent requested the Board rehear or review its October 9, 2008, Findings of Fact,
11 Conclusions of Law and Order for Revocation in Case no. MD-07-0504A. The Board voted to deny
12 the Respondent's Petition for Rehearing or Review upon due consideration of the facts and law
13 applicable to this matter.

14 **ORDER**

15 IT IS HEREBY ORDERED that:

16 Respondent's Petition for Rehearing or Review is denied. The Board's October 9, 2008,
17 Findings of Fact, Conclusions of Law and Order for Revocation in Case no. MD-07-0504A is
18 effective and constitutes the Board's final administrative order.

19 **RIGHT TO APPEAL TO SUPERIOR COURT**

20 Respondent is hereby notified that he has exhausted his administrative remedies.
21 Respondent is advised that an appeal to Superior Court in Maricopa County may be taken from
22 this decision pursuant to title 12, chapter 7, article 6.
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DATE: ~~THIS~~ ^{15th} day of December, 2008.

ARIZONA MEDICAL BOARD

By *L. S. Wynn*
LISA S. WYNN
Executive Director

ORIGINAL of the foregoing filed this 15th day of December, 2008 with:

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

Executed copy of the foregoing
mailed by U.S. Mail this 15th day
of December, 2008, to:

T. Dawn Farrison
Myers & Jenkins, PC
One East Camelback Rd.
Suite 500
Phoenix, AZ 85012

Chris [Signature]