

1 BEFORE THE ARIZONA MEDICAL BOARD

2
3 In the Matter of

4 **THOMAS S. SPENCER, MD**

5 Holder of License No. 41026
6 For the Performance of Healthcare Tasks
7 In the State of Arizona

Case No. MD-09-1284A

**ORDER FOR LETTER OF REPRIMAND
AND CONSENT TO SAME**

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

12 **FINDINGS OF FACT**

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

15 2. Respondent is the holder of license number 41026 for the performance of
16 health care tasks in the State of Arizona.

17 3. The Board initiated case number MD-09-1284A after receiving multiple
18 complaints regarding Dr. Spencer's use of intrauterine devices (IUDs).

19 4. In March 2009, Respondent ordered IUDs from a Canadian supplier. In April
20 2009, one month later, two representatives from Bayer Corporation, the supplier of IUDs in
21 the United States, reportedly visited Dr. Spencer and informed him that the Mirena IUDs
22 ordered from Canada were counterfeit, not Food and Drug Administration (FDA) approved,
23 and should not be used. However, Dr. Spencer continued to use non-FDA approved IUDs
24 through September 23, 2009.

25

1 5. On September 28, 2009, Respondent inserted a non-FDA approved Mirena
2 IUD for patient LB, which was five days after LB's last menstrual period. LB subsequently
3 had the IUD removed by another physician.

4 6. On March 4, 2009, Respondent conducted a well woman exam for SR and
5 noted SR had not had a menstrual period since May of 2008. Additionally, SR's PAP
6 Smear results revealed a diagnosis of atypical squamous cells of undetermined
7 significance (ASCUS), atypical glandular cells of undetermined significance (AGUS) as
8 well as positive Human Papillomavirus (HPV). On April 7, 2009, Respondent inserted a
9 non-FDA approved Mirena IUD for patient SR.

10 7. On May 7, 2009, Respondent placed a non-FDA approved Mirena IUD for
11 patient VB despite noting that VB's last menstrual period was 3½ weeks prior. VB had
12 reported her last date of unprotected intercourse was 2½ weeks prior, however the
13 patient's urine pregnancy test was negative. On June 11, 2009, VB had a positive
14 pregnancy test. Four days later, Respondent was unable to remove the IUD and
15 scheduled VB for surgery. However, VB cancelled the surgery and delivered at term with
16 another physician and the IUD was delivered with the placenta.

17 8. Respondent noted that patient YH had an abnormal PAP Smear that was
18 positive for HPV and ASCUS in February 2009. In May 2009, Respondent placed a non-
19 FDA approved Mirena IUD for patient YH. Respondent saw YH two days later with
20 complaints of pain due to IUD placement. On June 19, 2009, YH's IUD fell out.
21 Respondent saw YH five days later and started YH on Levaquin without noting a
22 diagnosis.

23 9. The review of the charts did not indicate that Respondent provided informed
24 consent to the patients in regards to IUD's either approved or not and did not properly
25 manage and evaluate patients receiving IUD placements.

1 10. The standard of care when a patient elects to have an IUD placed requires a
2 physician to introduce the IUD within seven days of a menstrual period based on the
3 information provided by the company.

4 11. Respondent deviated from the standard of care by placing an IUD for VB 3 ½
5 weeks after her menstrual period.

6 12. The standard of care requires a physician to perform an endometrial biopsy
7 for a patient diagnosed with AGUS and amenorrhea for one year, especially in an obese
8 patient.

9 13. Respondent deviated from the standard of care by placing an IUD for SR
10 who had no menstrual period for one year, and had a PAP Smear that showed ASCUS
11 and AGUS.

12 14. The standard of care when a physician is advised by the product
13 representative that an IUD supplied by the outside supplier is not FDA approved and
14 should not be used requires the physician to discontinue using the IUDs.

15 15. Respondent deviated from the standard of care by continuing to use a non-
16 FDA approved IUD from a Canadian supplier after he was advised by the United States
17 supplier not to use it.

18 16. The standard of care requires a physician to perform a complete evaluation,
19 discuss risks, options, and benefits and obtain adequate informed consent before inserting
20 an IUD.

21 17. Respondent deviated from the standard of care by failing to perform a
22 complete evaluation, failing to discuss options, risks, and benefits and by failing to obtain
23 informed consent before inserting an IUD.

24 18. Respondent could have potentially caused miscarriage and pregnancy
25 complications to VB, due to the placement of the IUD. Since patient SR had AGUS and

1 amenorrhea, endometrial hyperplasia or cancer may have been present and Respondent
2 could have caused a delayed diagnosis due to the placement of the IUD.

3 **CONCLUSIONS OF LAW**

4 1. The Board possesses jurisdiction over the subject matter hereof and over
5 Respondent.

6 2. The conduct and circumstances described above constitute unprofessional
7 conduct pursuant to A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might be
8 harmful or dangerous to the health of the public.").

9 **ORDER**

10 IT IS HEREBY ORDERED THAT Respondent is issued a Letter of Reprimand.

11
12 DATED AND EFFECTIVE this 5th day of October, 2010.

13
14 ARIZONA MEDICAL BOARD

15 (SEAL)



16
17 By *Lisa S. Wynn*
18 Lisa S. Wynn
19 Executive Director
20

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
2 to a hearing or judicial review in state or federal court on the matters alleged, or to
3 challenge this Order in its entirety as issued by the Board, and waives any other cause of
4 action 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. Respondent consents to the entry of the order set forth above as a
8 compromise of a disputed matter between Respondent and the Board, and does so only
9 for the purpose of terminating the disputed matter by agreement. Respondent
10 acknowledges it is the Board's position that, if this matter proceeded to formal hearing, the
11 Board could establish sufficient evidence to support a conclusion that certain aspects of
12 Respondent's conduct constituted unprofessional conduct. Respondent agrees not to
13 contest the validity of the Finding of Fact and conclusions of Law contained in the Order in
14 a present or future administrative proceeding before the Board (or any other state agency
15 in the State of Arizona, concerning the denial or issuance of any license or registration
16 required by the State to engage in the practice or any business or profession.)

17 6. Upon signing this agreement, and returning this document (or a copy
18 thereof) to the Board's Executive Director, Respondent may not revoke the consent to the
19 entry of the Order. Respondent may not make any modifications to the document. Any
20 modifications to this original document are ineffective and void unless mutually approved
21 by the parties.

22 7. This Order is a public record that will be publicly disseminated as a formal
23 disciplinary action of the Board and will be reported to the National Practitioner's Data
24 Bank and on the Board's web site as a disciplinary action.

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

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

6 10. Any violation of this Consent Agreement constitutes unprofessional conduct
7 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("violation of a formal order,
8 probation agreement or stipulation issued or entered into by the board or its executive
9 director under this chapter") and 32-1451.

10 T. Spencer
11 THOMAS SPENCER, MD
12 EXECUTED COPY of the foregoing mailed
13 this 14 day of Sept., 2010 to:

DATED: 9-14-10

14 Steven Myers
15 One E. Camelback Rd., Ste. 500
16 Phoenix AZ 85012
17 RESPONDENT'S ATTORNEY

18 ORIGINAL of the foregoing filed
19 this 5th day of October, 2010 with:

20 Arizona Medical Board
21 9545 E. Doubletree Ranch Road
22 Scottsdale, AZ 85258
23 Chris Camp
24 Arizona Medical Board Staff
25