BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **GARY W. HALL, M.D.,** Holder of License No. **12977** For the Practice of Allopathic Medicine In the State of Arizona.	Board Case No. 08A-12977-MDX **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On February 4, 2009, this matter came before the Arizona Medical Board ("Board") for oral argument and consideration of the Administrative Law Judge (ALJ) Brian Brendan Tully's proposed Findings of Fact and Conclusions of Law and Recommended Order. Assistant Attorney General Jennifer Boucek, represented the State. Chris Munns, Assistant Attorney General with the Solicitor General's Section of the Attorney General's Office, was present and available to provide independent legal advice to the Board.

The Board, having considered the ALJ's decision and the entire record in this matter, hereby issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Arizona Medical Board ("Board") is the authority for licensing and regulating the practice of allopathic medicine in the State of Arizona.
2. Gary W. Hall, M.D. ("Respondent") is the holder of License No. 12977 issued by the Board for the practice of allopathic medicine in Arizona.
3. Respondent is an Ophthalmologist.
4. The Board opened Case No. MD-05-1133A after it received an anonymous complaint that Respondent had been observed performing minor surgery in his office.
5. On or about April 13, 2005, Respondent entered into a Consent Agreement and Order for Probation and Practice Restriction ("Consent Agreement") with the Board

in Case Nos. MD-99-0838, MD-01-0145, MD-01-0456, MD-01-0569, MD-03-0327, and, MD-03-0920.

6. Pursuant to the terms of the Consent Agreement, Respondent was placed on probation for a period of five years.

7. The Board ordered that Respondent be "permanently prohibited from performing or assisting in surgery of any kind." The Board's Order required that "Respondent must refer any patient who may be a surgical candidate to another qualified surgeon."

8. In the present Complaint, the Board alleges that since the Consent Agreement Respondent has performed incisions and drainage of chalazions and removal of loose sutures in his minor procedures rooms. The Board alleges that such treatment is surgery, in violation of the Consent Agreement. Respondent contends that such treatment is not surgery.

9. By letter dated January 14, 2006 to the Board, Respondent responded to the anonymous complaint.

10. By letter dated March 30, 2006 to then Board staff Mark Nanney, M.D., J.D., Alan Geller, M.D. responded to a recent telephone call with Dr. Nanney. Dr. Geller expressed the following medical opinion:

> I would certainly agree that the incision and drainage of a chalazion does in fact represent surgery by any reasonable definition. It is, to be sure, minor surgery with very low risk of visual damage if done appropriately, but there can be no question that it qualifies as surgery.

11. Dr. Geller did not testify at the hearing in the present case.

12. The American Medical Associations' CPT 2007 Surgery/Eye and Ocular Adnexa lists the following relevant codes: 67800 Excision of chalazion, single; 67801 multiple, same lid; 67805 multiple, different lids; and 67808 under general anesthesia and/or requiring hospitalization, single or multiple.

13. To support his position, Respondent introduced into evidence the Ophthalmic Mutual Insurance Company Liability Insurance Policy, revised effective December 1, 2000 ("Policy").

14. Page 22 of the Policy provides for the following endorsement:

OMC121 – Limited Surgery Exclusion

It is hereby understood and agreed that coverage applies only to **claims** arising form the practice of medical ophthalmology and the specified surgical procedures listed below. No coverage is provided for other surgical procedures.

Coverage applies to medical ophthalmology and the following procedures only: removal of sutures, epilation, tear duct probing or irrigation done under local anesthetic, removal of superficial foreign bodies from the cornea or conjunctiva, repair of minor lid lacerations limited to the skin and/or muscle, repair of minor conjunctival lacerations, biopsy of lid tumors, biopsy of the conjunctiva, removal of cysts and other non-cancerous skin lesions and tumors, removal of corneal epithelium, incision and drainage, punctual closure, papillomas, chalzions [sic], non-incisional entropion or ectropion repair, laser capsulotomy, laser iridotomy, laser iridoplasty, laser trabeculoplasty, wedge resection for non-cancerous tumors, and assisting in surgery.

15. Respondent contends that the following Policy endorsement supports his position:

It is hereby understood and agreed that coverage applies on to **claims** arising from the practice of medical ophthalmology and the specified office procedures listed below. No coverage is provided for surgical procedures, including surgical assisting.

Coverage applies to medical ophthalmology and the following procedures only: removal of sutures, epilation, tear duct probing or irrigation done under local anesthetic, removal of superficial foreign bodies from the cornea or conjunctiva, repair of minor lid lacerations limited to the skin and/or muscle, repair of minor conjunctival lacerations, biopsy of lid tumors, biopsy of the conjunctiva, removal of cysts and other non-cancerous skin lesions and tumors, removal of corneal epithelium, incision and drainage, punctual closure, papillomas, chalzions [sic], non-incisional entropion or ectropion repair.

16. The Policy endorsements described above are found to address insurance coverage between the insurer and the insured physician. Excision of chalazion

and incision and drainage are listed as both "specified surgical procedures" under the Limited Surgery Exclusion and as "specified office procedures" under the Surgical Exclusion.

17. Neither the Board nor Respondent presented a physician's testimony at the hearing.

18. The evidence of record supports a finding that incision and drainage, and the excision of chalazion is surgery which can be performed with local or general anesthesia depending upon the status of the patient's condition.

19. Respondent violated the provisions of the previous Board Order that permanently prohibiting him from performing or assisting in surgery.

20. In addition to the present disciplinary matter and the prior Consent Agreement, the following is Respondent's prior Board history:

> 6/22/00 Advisory Letter – Potential misdiagnosis of glaucoma associated with aggressive treatment.
>
> 5/27/99 Decree of Censure with three year probation and $15,000.00 Civil Penalty – Unprofessional Conduct (Permanent ban on RK surgery; effective 11/21/99, no Lasik surgery until completing Lasik CME; random chart reviews). 10/10/99 – Lasik CME completed.
>
> 1/23/97 Letter of Reprimand – Unprofessional Conduct (inappropriate advertising; fees for services not rendered/fee splitting; failure to furnish information to the Board; misrepresenting Board certification).
>
> 1/19/96 Probation three years – Unprofessional Conduct (RK to be done within ISRS guidelines; informed patient consent, including post-op care; community service; $10,000.00 reimbursement) 1/19/99 Probation terminated.
>
> 10/16/95 Advisory Letter – Inappropriate advertising.
>
> 07/11/94 Advisory Letter – Inappropriate coding.
>
> 04/07/92. Advisory Letter – Recommendation of unnecessary cataract surgery for an 85-year old patient.
>
> 10/10/90 Advisory Letter – Failure to appropriately document indications of visual impairment prior to performing surgery.

06/24/87 Advisory Letter – Advertisements referring to no-cost cataract surgery were misleading.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent and the subject matter in this case.
2. Pursuant to A.R.S. § 41-1092.07(G)(2) and A.A.C. R2-19-119(B), the Board has the burden of proof in this matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-119(A).
3. Respondent violated the provisions of A.R.S. § 32-1401(27)(r) by practicing surgery as described in the above Findings in violation of the Consent Agreement which permanently prohibited Respondent for performing or assisting in surgery.
4. Pursuant to A.R.S. § 32-1451(K), Respondent should be assessed a civil penalty in the amount of $10,000.00 for the above-described violation.
5. Pursuant to A.R.S. § 32-1451(M), Respondent should be assessed the costs of the formal hearing.

ORDER

Based in the foregoing, the Board orders that Respondent's License No. 12977 shall be placed on probation for an additional period of ten years in Case No. MD-05-1133(A), subject to the terms of probation set forth in the Consent Agreement. The probation in this matter shall run consecutively with Respondent's present probation under the Consent Agreement.

Respondent is assessed a civil penalty in the amount of $10,000.00 for the above-described statutory violation in Case No. MD-05-1133(A). The said civil penalty shall be paid by Respondent to the Board within 45 days from the effective date of the Order entered in Case No. MD-05-1133(A), unless that deadline date is extended by the Board or its Executive Director.

Respondent is assessed the costs of the formal hearing. Those costs shall be paid on or about 45 days from the date the Board issues an invoice for those costs, unless that deadline date is extended by the Board or its Executive Director.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

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

DATED this 5TH day of February, 2009.

THE ARIZONA MEDICAL BOARD

By _____
Lisa S. Wynn
Executive Director

ORIGINAL of the foregoing filed this 5th day of February, 2009 with:

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

COPY OF THE FOREGOING FILED this 5th day of February, 2009 with:

Cliff J. Vanell, Director
Office of Administrative Hearings
1400 W. Washington, Ste 101
Phoenix, AZ 85007

Executed copy of the foregoing
mailed by U.S. Mail this
5th day of February, 2009 to:

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