

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

3 **AARON C. BORNSTEIN, M.D.**

4 Holder of License No. 14650
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-08-0324A

**CONSENT AGREEMENT FOR
DECREE OF CENSURE**

7 **CONSENT AGREEMENT**

8 By mutual agreement and understanding, between the Arizona Medical Board
9 ("Board") and Aaron C. Bornstein, M.D. ("Respondent"), the parties agree to the following
10 disposition of this matter.

11 1. Respondent has read and understands this Consent Agreement and the
12 stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement").
13 Respondent acknowledges that he has the right to consult with legal counsel regarding
14 this matter.

15 2. By entering into this Consent Agreement, Respondent voluntarily
16 relinquishes any rights to a hearing or judicial review in state or federal court on the
17 matters alleged, or to challenge this Consent Agreement in its entirety as issued by the
18 Board, and waives any other cause of action related thereto or arising from said Consent
19 Agreement.

20 3. This Consent Agreement is not effective until approved by the Board and
21 signed by its Executive Director.

22 4. The Board may adopt this Consent Agreement or any part thereof. This
23 Consent Agreement, or any part thereof, may be considered in any future disciplinary
24 action against Respondent.

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1 5. This Consent Agreement does not constitute a dismissal or resolution of
2 other matters currently pending before the Board, if any, and does not constitute any
3 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any
4 other pending or future investigation, action or proceeding. The acceptance of this
5 Consent Agreement does not preclude any other agency, subdivision or officer of this
6 State from instituting other civil or criminal proceedings with respect to the conduct that is
7 the subject of this Consent Agreement.

8 6. All admissions made by Respondent are solely for final disposition of this
9 matter and any subsequent related administrative proceedings or civil litigation involving
10 the Board and Respondent. Therefore, said admissions by Respondent are not intended
11 or made for any other use, such as in the context of another state or federal government
12 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
13 any other state or federal court.

14 7. Upon signing this agreement, and returning this document (or a copy
15 thereof) to the Board's Executive Director, Respondent may not revoke the acceptance of
16 the Consent Agreement. Respondent may not make any modifications to the document.
17 Any modifications to this original document are ineffective and void unless mutually
18 approved by the parties.

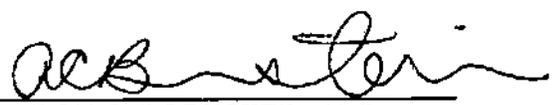
19 8. If the Board does not adopt this Consent Agreement, Respondent will not
20 assert as a defense that the Board's consideration of this Consent Agreement constitutes
21 bias, prejudice, prejudgment or other similar defense.

22 9. This Consent Agreement, once approved and signed, is a public record that
23 will be publicly disseminated as a formal action of the Board and will be reported to the
24 National Practitioner Data Bank and to the Arizona Medical Board's website.
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10. If any part of the Consent Agreement is later declared void or otherwise unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force and effect.

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


AARON C. BORNSTEIN, M.D.

DATED: 31 July 2009

1 **FINDINGS OF FACT**

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

4 2. Respondent is the holder of license number 14650 for the practice of
5 allopathic medicine in the State of Arizona.

6 3. The Board initiated case number MD-08-0324A after receiving notification of
7 a malpractice settlement involving Respondent's care and treatment of a sixty-seven year-
8 old male patient ("RF").

9 4. RF was admitted to a nursing home for a brief period of rehabilitation after
10 sustaining a left hip fracture. While in the nursing home, RF was under the care of
11 Respondent from May 21, 2002 through July 11, 2003. RF had conditions of diabetes,
12 hyperlipidemia, high blood pressure, kidney disease and anemia. Upon RF's admission to
13 the nursing home on May 21, 2002, Respondent did not document physical exams of RF;
14 however, Respondent wrote across the physical exam form "see H and P of May 9, 2002,
15 which refers to a physical exam done by another provider. Progress notes by Respondent
16 did not contain physical exam findings. Further, there was no indication that Respondent
17 controlled RF's hypertension and diabetes or monitored his stage 4 chronic kidney
18 disease, which became end stage renal disease.

19 5. Additionally, prior to admission to the nursing home, RF was being treated
20 with Coumadin; however, after admission Respondent did not document the rationale for
21 continued use of Coumadin for RF. There also was no documentation that Respondent
22 discussed the risks and benefits of this medication with RF or that he referred RF for a
23 renal or gastroenterology consultation. Further, RF was sent to the emergency room (ER)
24 several times; however, the ER visits were not referenced in Respondent's progress
25 notes, including follow-up plans.

1 6. Shortly thereafter, it was noted that RF pulled on his Foley catheter and had
2 blood in his urine. There was no documentation of intervention by Respondent including
3 an examination of the area. RF subsequently developed urethral erosion from the
4 catheter, suffered penile gangrene and had surgery for penile salvage. Although a
5 consulting urologist was involved, there was no documentation of intervention by
6 Respondent including an examination of the area. RF subsequently suffered a stroke and
7 progressively lost function. RF later developed extensive decubiti and sepsis with deep
8 gluteal abscesses and sacral osteomyelitis and was deemed inoperable due to his
9 comorbidities. The issues around the decubiti and the penile gangrene both involve the
10 quality of nursing care provided. Nevertheless, despite the presence of a wound care
11 nurse, there again was no documentation of aggressive intervention by respondent as
12 RF's decubiti became widespread. On November 27, 2003, RF died of respiratory failure.
13 According to Respondent, RF was not an easy patient to take care of. He refused
14 treatments and would be combative and resistive to care. It probably would have been
15 difficult to enforce any position that would help his decubiti and physical therapy was
16 limited in their ability to help him maintain mobility when he would not cooperate.

17 7. The standard of care for a patient with multiple acute and chronic medical
18 problems requires a physician to examine and assess the patient; to attempt to control the
19 patient's hypertension and diabetes; to attentively monitor the patient's lipids and adjust
20 the dose of medication accordingly due to multiple risks for cardiovascular disease; to
21 assess the renal function of a patient with an impaired kidney, work up the patient's
22 anemia and order a renal and gastroenterology consultation; to examine the patient's
23 decubiti and give orders to position the patient in an effort to prevent or treat the problem
24 and to examine a patient who is known to pull on the Foley catheter and had the presence
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1 of blood in the urine. The standard of care also requires medical indication for continuation
2 of Coumadin and to discuss the risks and benefits of this medication with the patient.

3 8. Respondent deviated from the standard of care because he did not examine
4 RF; he did not attempt to control his hypertension and diabetes; he did not monitor his
5 lipids and adjust the medication accordingly; he did not assess RF's renal function and
6 anemia or order a renal and gastroenterology consultation; he did not fully examine his
7 decubiti, or the area where RF pulled out his own catheter, or give orders to position RF in
8 an effort to prevent or treat the problem. Respondent also deviated from the standard of
9 care because he did not have any indications for continuing RF's Coumadin therapy and
10 he did not discuss the risks and benefits of the medication with RF.

11 9. Although RF died of respiratory failure, it was the decubiti that was the
12 source of the sepsis along with the associated osteomyelitis that were disease processes
13 that led to his death. RF experienced profound uremia and his penile injury progressed to
14 penile gangrene that required surgery for penile salvage. RF's stage 4 chronic kidney
15 disease progressed to kidney failure requiring dialysis. Without blood sugar and
16 hypertension control, RF was not given the chance for delayed progression of the disease
17 and avoidance of dialysis. RF's stroke came after fifteen months of uncontrolled
18 hypertension and diabetes and unmonitored hyperlipidemia. The continued Coumadin
19 therapy may have resulted in significant bleed while anticoagulated and could have fallen
20 out of the wheelchair. RF may have had a gastroenterology source for his guaiac positive
21 stools that was never identified and never pursued.

22 **CONCLUSIONS OF LAW**

23 1. The Board possesses jurisdiction over the subject matter hereof and over
24 Respondent.

1 Aaron C. Bornstein, M.D.
2 Address of Record

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4 Investigational Review

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