

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **KENNETH J. TOLMAN, M.D.**

4 Holder of License No. 36900
5 For the Practice of Medicine
6 In the State of Arizona.

Case No. MD-07-0340A

**CONSENT AGREEMENT FOR
SURRENDER OF LICENSE**

7 **CONSENT AGREEMENT**

8 By mutual agreement and understanding, between the Arizona Medical Board
9 ("Board") and Kenneth J. Tolman, M.D. ("Respondent"), the parties agreed 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 and has done so or chooses not to do so.

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.

25

1 5. This Consent Agreement does not constitute a dismissal or resolution of other
2 matters currently pending before the Board, if any, and does not constitute any waiver,
3 express or implied, of the Board's statutory authority or jurisdiction regarding any other
4 pending or future investigation, action or proceeding. The acceptance of this Consent
5 Agreement does not preclude any other agency, subdivision or officer of this State from
6 instituting other civil or criminal proceedings with respect to the conduct that is the subject
7 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 thereof) to
15 the Board's Executive Director, Respondent may not revoke the acceptance of the
16 Consent Agreement. Respondent may not make any modifications to the document. Any
17 modifications to this original document are ineffective and void unless mutually approved
18 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 will
23 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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1 10. If any part of the Consent Agreement is later declared void or otherwise
2 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in
3 force and effect.

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

8
9
10 
11 _____
12 KENNETH J. TOLMAN, M.D.

Dated: 7/6/09

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 36900 for the practice of
5 allopathic medicine in the State of Arizona.

6 3. The Board initiated case number MD-07-0340A after receiving notification of
7 Respondent's arrest. The Board subsequently obtained information that Respondent used
8 the Internet to solicit sex from someone he thought was a minor.

9 4. From December 5, 2006 through April 9, 2007, Respondent initiated multiple
10 internet contacts with someone he believed was a thirteen year-old female. However,
11 Respondent was actually contacting a member of the Child Predator Unit in Pennsylvania,
12 who had assumed the identity of a minor female ("child"). Respondent's contacts included
13 online sexual discussions in which he solicited the child to engage in sexual intercourse
14 with him and usage of a web camera to transmit sexual images of himself. On April 26,
15 2007, Respondent was arrested for three felony counts of unlawful contact with a minor
16 and criminal use of a computer.

17 5. On May 7, 2007, Respondent signed an interim consent agreement
18 restricting him from practicing clinical medicine. On August 16, 2007, Respondent was
19 charged with felony counts of contact/communication with a minor and criminal use of a
20 computer. On June 9, 2009, Respondent was found guilty of those charges.

21 6. Respondent admits to the acts described above and that they constitute
22 unprofessional conduct pursuant to A.R.S. §32-1401(27)(d) ("[c]ommitting a felony, whether
23 or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either
24 case, conviction by any court of competent jurisdiction or a plea of no contest is conclusive
25 evidence of the commission").

1 CONCLUSIONS OF LAW

2 1. The Board possesses jurisdiction over the subject matter hereof and over
3 Respondent.

4 2. The Board possesses statutory authority to enter into a consent agreement
5 with a physician and accept the surrender of an active license from a physician who
6 admits to having committed an act of unprofessional conduct. A.R.S. § 32-1451(T)(2).

7 ORDER

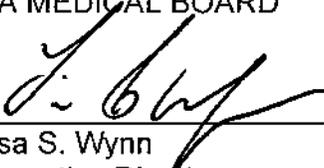
8 IT IS HEREBY ORDERED THAT Respondent immediately surrender License
9 Number 36900, issued to Kenneth J. Tolman, M.D. for the practice of allopathic medicine
10 in the State of Arizona, and return his wallet card and certificate of licensure to the Board.

11 DATED and effective this 5TH day of AUGUST, 2009.



12 ARIZONA MEDICAL BOARD

13 By:

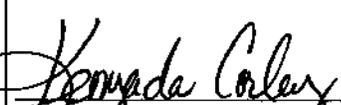
14 
15 Lisa S. Wynn
Executive Director

16 ORIGINAL of the foregoing filed
17 this 6 day of August, 2009 with:

18 Arizona Medical Board
19 9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

20 EXECUTED COPY of the foregoing mailed
21 this 6 day of August, 2009 to:

22 Kenneth J. Tolman, M.D.
23 Address of Record

24 
25 Arizona Medical Board Staff