

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **MICHAEL P. LOWE, M.D.,**

4 Holder of License No. 29130
5 for the Practice of Allopathic Medicine
6 In the State of Arizona.

Board Case No. 12A-29130-MDX

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

(Letter of Reprimand)

7 On February 6, 2013, this matter came before the Arizona Medical Board ("Board")
8 for consideration of the Administrative Law Judge (ALJ) Tammy L. Eigenheer's proposed
9 Findings of Fact, Conclusions of Law and Recommended Order. Michael P. Lowe, M.D.,
10 ("Respondent") appeared before the Board on his own behalf; Assistant Attorney General
11 Sarah Selzer, represented the State. Christopher Munns with the Solicitor General's
12 Section of the Attorney General's Office, was available to provide independent legal
13 advice to the Board.

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

16 **FINDINGS OF FACT**

- 17 1. The Arizona Medical Board (Board) is the authority for the regulation and control of
18 the practice of allopathic medicine in the State of Arizona.
- 19 2. Michael P. Lowe, M.D. (Respondent) has been the holder of License No. 29130
20 for the practice of allopathic medicine in Arizona since 2001.
- 21 3. Respondent practices palliative medicine. He testified that he has been board-
22 certified in palliative medicine since 2007.
- 23 4. In or around August 2002, Respondent began treating patient A.C. A.C. was 76
24 years old at that time.
- 25 5. On or around July 8, 2003, A.C. executed the Sixth Amendment to the A.C. Trust
Agreement (the Amendment). The Amendment named Respondent as the sole
beneficiary of her estate.
6. In or around July 2004, Respondent learned that A.C. had named him as the sole
beneficiary of her estate.

1 7. On or about July 13, 2004, Respondent received a letter from Tom Russell, an
2 insurance broker licensed in Arizona, detailing A.C.'s investments. According to the
3 letter, the value of A.C.'s investments was close to \$400,000.00. At the time of the letter,
Respondent was A.C.'s physician but did not have any power of attorney over A.C.

4 8. On July 22, 2004, A.C. was admitted to hospice care. At the time of admission,
5 A.C. scored 16 out of 30 on the Mini Mental Status Examination indicating a moderate
6 level of dementia.

7 9. In or about August 2004, Respondent arranged for a notary to come to A.C.'s
house so that A.C. could re-execute the Amendment.

8 10. On or about August 5, 2004, A.C. re-executed the Amendment in the presence of
9 the notary. At the same time, A.C. executed a Financial Durable General Power of
10 Attorney, a Durable Mental Health Care Power of Attorney, and a Durable Health Care
11 Power of Attorney. A.C. gave these powers of attorney to Respondent and his wife.

12 11. After A.C. re-executed the Amendment in August 2004, Respondent continued to
provide medical care to A.C.

13 12. While A.C. was in hospice care, Respondent and David Glow, M.D., were the
14 medical directors of the hospice. Respondent coordinated with Dr. Glow regarding A.C.'s
15 treatment. Respondent testified that he informed Dr. Glow and the other members of the
16 interdisciplinary team overseeing A.C.'s care that Respondent was the named beneficiary
of A.C.'s estate.

17 13. Respondent was unable to separate himself from A.C.'s care because he was in a
18 solo practice and could not ask a partner to see her, he was the only physician in the
19 area who performed house calls, and he was the only physician on call for hospice care
20 on most nights and weekends.

21 14. On October 31, 2004, A.C. died. Respondent was the certifying physician for
A.C.'s death certificate. The cause of death was identified as sepsis as a result of
22 Alzheimers type dementia.

23 15. In November and December 2004, Respondent received over \$350,000.00 as his
24 inheritance from A.C.'s estate.

25

1 16. Respondent inherited A.C.'s home, which was a rental property from A.C.'s death
2 until March 2010. Respondent lived in the house from March 2010 through July 2012
3 when he sold the house.

4 17. More than five years after A.C.'s death, the Board learned of her death and the
5 disposition of her estate.

6 18. After opening its investigation, the Board assigned the matter to its assigned
7 medical consultant, Gillian Hamilton, M.D., for review. Dr. Hamilton is board-certified in
8 geriatric medicine, internal medicine, and palliative medicine.

9 19. On March 12, 2011, Dr. Hamilton prepared her "Medical Consultant Report and
10 Summary" in which she proposed as a standard of care that "[a] physician should not
11 become the beneficiary of the estate of his patient" and opined that Respondent deviated
12 from that standard of care when Respondent "became the beneficiary of the estate of his
13 patient, a vulnerable adult, and was aware that she was making him the beneficiary. He
14 was involved in her signing the papers to make him the beneficiary, driving the notary to
15 her home per police report." At the hearing, Dr. Hamilton's testimony was consistent with
16 her report.

17 20. At no time was it alleged that the quality of medical care provided to A.C. by
18 Respondent was affected by the fact he was named as the beneficiary of her estate.

19 21. On August 22, 2012, the Board issued a Complaint and Notice of Hearing to
20 Respondent alleging Respondent had engaged in unprofessional conduct pursuant to
21 A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might be harmful or
22 dangerous to the health of the patient or the public").

23 22. A hearing was held at the Office of Administrative Hearings on November 26, 2012,
24 at which Respondent represented himself.¹

25 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), the Board has the burden of proof in this matter. Pursuant to A.R.S. § 32-1451.04, the standard of proof is by clear and

1 convincing evidence. The evidence of record supports the conclusion that the Board met
2 its burden of proof in this matter.

3 3. The Board acknowledged it had not promulgated a rule specifically addressing
4 physicians' receipt of gifts from patients and indicated that the lack of such a rule was
5 "because it never comes up." However, the Board presented articles from various
6 journals addressing the ethics of physicians accepting gifts from patients, indicating that
7 the issue and the ethical implications of accepting gifts from patients is known in the
8 medical community.

9 4. The Board argued that physicians who accept substantial gifts from patients fall
10 below the standard of care because the receipt of such gifts could affect the quality of
11 care provided to that patient. By becoming a beneficiary to a patient's estate, the
12 physician is in a position in which he or she would benefit from the death of the patient.
13 Alternatively, substantial gifts may be viewed as eliciting preferential treatment. In either
14 case, the appearance of impropriety raises an ethical concern.

15 5. Respondent emphasized that A.C. decided in 2003 to make Respondent the
16 beneficiary of her estate without any influence or input from him. Respondent testified
17 that when he learned that A.C. had executed the Amendment, he attempted to change
18 her mind without success. Respondent downplayed his role in securing the notary used
19 when A.C. re-executed the Amendment as merely respecting A.C.'s decision.
20 Respondent also emphasized that he did not receive any money or other gifts from A.C.
21 while she was his patient. Rather, Respondent received funds from the trust after A.C.
22 died. Respondent acknowledged the potential for harm that could result from a physician
23 receiving a gift from a patient.

24 6. The Board sustained its burden of proving that Respondent violated the charged
25 provision of A.R.S. § 32-1401(27)(q) by engaging in "[a]ny conduct or practice that is or
might be harmful or dangerous to the health of the patient or the public."

ORDER

IT IS ORDERED that Respondent is issued a Letter of Reprimand in this matter.

¹ At the hearing, Respondent stipulated to Paragraphs 1 through 5, 7, 9, 10, and 12 through 16, of the
Complaint and Notice of Hearing. Those paragraphs are encompassed in Paragraphs 1 through 7, 10, 11,

1 Executed copy of the foregoing
mailed by U.S. Mail this
2 17 day of February, 2013 to:

3 Michael P. Lowe, M.D.
Address of Record

4 Sarah Selzer
5 Assistant Attorney General
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9 # 2976393

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