

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

3 **MARK ZACHARY, M.D.**

4 Holder of License No. 12879
5 For the Practice of Allopathic Medicine
6 In the State of Arizona

Case No. MD-06-0182B

**CONSENT AGREEMENT FOR
LETTER OF REPRIMAND**

7 **CONSENT AGREEMENT**

8 By mutual agreement and understanding, between the Arizona Medical Board
9 ("Board") and Mark Zachary, 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.

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 of any part thereof. This
23 Consent Agreement, or any part thereof, may be considered in any future disciplinary
24 action against Respondent.

25 5. This Consent Agreement does not constitute a dismissal or resolution of other
matters currently pending before the Board, if any, and does not constitute any waiver,

1 express or implied, of the Board's statutory authority or jurisdiction regarding any other
2 pending or future investigation, action or proceeding. The acceptance of this Consent
3 Agreement does not preclude any other agency, subdivision or officer of this State from
4 instituting other civil or criminal proceedings with respect to the conduct that is the subject
5 of this Consent Agreement.

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

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

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

20 9. This Consent Agreement, once approved and signed, is a public record that will
21 be publicly disseminated as a formal action of the Board and will be reported to the
22 National Practitioner Data Bank and to the Arizona Medical Board's website.

23 10. If any part of the Consent Agreement is later declared void or otherwise
24 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force
25 and effect.

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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.

Mark Zachary
MARK ZACHARY, M.D.

DATED: 3/1/2007

FINDINGS OF FACT

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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 12879 for the practice of
5 allopathic medicine in the State of Arizona.

6 3. The Board initiated case number MD-06-0182B after receiving notification of
7 a malpractice settlement involving Respondent's care and treatment of a fifty-six year-old
8 female patient ("SS").

9 4. On June 25, 2003 SS presented to the hospital following a motor vehicle
10 accident. Respondent examined SS and noted she complained of bilateral ankle pain, right
11 arm pain and back pain. Respondent's impression was a compression fracture of the T6
12 vertebra, mid-shaft comminuted fracture of the right humerus, a fracture of the medial
13 malleolus and a contusion of the right ankle. Respondent placed SS in a humeral brace
14 and in a walking boot on her left ankle.

15 5. An x-ray taken on June 25, 2003, reported by the radiologist, noted SS had a
16 bi-malleolar ankle fracture. The radiologist also reported the right ankle had no osseous
17 abnormality. Respondent read the x-ray taken that day and his hospital notes documented
18 SS had a poor fracture alignment of the humerus in the brace with 45 degrees angulation.
19 Respondent did not perform a physical examination to correlate the findings on x-ray. At
20 the time the radiologist and Respondent were not aware the right and left ankle x-rays
21 were mislabeled by the x-ray technician.

22 6. The nursing notes on June 28, 2003 and June 29, 2003 noted SS's right foot
23 was swollen and SS complained of 9 out of 10 pain on her right ankle and rib area.

24 7. On July 8, 2003 Respondent evaluated SS in his office and noted she was
25 ambulating on her left ankle in a brace and she had swelling on the medial and lateral

1 ankle with tenderness laterally. X-rays of SS's left ankle taken that day revealed an
2 avulsion of the tip of the lateral malleolus. These findings were different from the June 25,
3 2003 x-rays that revealed a bi-malleolar fracture. Respondent did not clarify the
4 discrepancy between the two x-ray findings.

5 8. Respondent saw SS in the office several times between July 15, 2003 and
6 September 24, 2003, for follow up on her humerus fracture, for which Respondent treated
7 her appropriately.

8 9. On November 14, 2003 SS returned for an office visit and again complained
9 of right ankle swelling and medial and lateral tenderness. Respondent ordered x-rays of
10 her right ankle and noted the right ankle x-rays revealed a nonunited medial malleolar with
11 a 5 mm gap and nonunion. Respondent recommended SS have surgery to repair the
12 fracture. Another orthopedic surgeon eventually performed the surgery.

13 10. The standard of care requires a physician to diagnose and immobilize an
14 ankle fracture in a timely manner.

15 11. Respondent deviated from the standard of care because he failed to
16 diagnose and immobilize SS's right ankle fracture in a timely manner.

17 12. Respondent's failure to diagnose SS's right ankle fracture until five months
18 after her injury resulted in a non-united fracture requiring surgical intervention.

19 CONCLUSIONS OF LAW

20 1. The Board possesses jurisdiction over the subject matter hereof and over
21 Respondent.

22 2. The conduct and circumstances described above constitute unprofessional
23 conduct pursuant to A.R.S. § 32-1401 (27)(II) ("[c]onduct that the board determines is
24 gross negligence, repeated negligence or negligence resulting in harm to or the death of a
25 patient.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand for failure to diagnose and treat the patient's right ankle fracture in a timely manner.

2. This Order is the final disposition of case number MD-06-0182B.

DATED AND EFFECTIVE this 13th day of April, 2007.



ARIZONA MEDICAL BOARD

By T. C. Miller
TIMOTHY C. MILLER, J.D.
Executive Director

ORIGINAL of the foregoing filed
this 13th day of April, 2007 with:

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

EXECUTED COPY of the foregoing mailed
this 13th day of April, 2007 to:

Mandi Karvis
Sanders & Parks
3030 N 3rd St Ste 1300
Phoenix AZ 85012-3099

EXECUTED COPY of the foregoing mailed
this 13th day of April, 2007 to:

Mark Zachary, M.D.
Address of Record

Chris Samp
Investigational Review