

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

3 **KENNETH N. McCORMICK, M.D.**

4 Holder of License No. 17948  
5 For the Practice of Allopathic Medicine  
6 In the State of Arizona

Case No. MD-06-0307A

**CONSENT AGREEMENT FOR  
LETTER OF REPRIMAND**

7 **CONSENT AGREEMENT**

8 By mutual agreement and understanding, between the Arizona Medical Board  
9 ("Board") and Kenneth N. McCormick, M.D. ("Respondent"), the parties agreed to the  
10 following 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.

1           11: Any violation of this Consent Agreement constitutes unprofessional conduct  
2 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order,  
3 probation, consent agreement or stipulation issued or entered into by the board or its  
4 executive director under this chapter") and 32-1451:

5  
6  
7           *Kenneth N. McCormick M.D.*           DATED: 12-4-06  
8           KENNETH N. McCORMICK, M.D.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 17948 for the practice of  
5 allopathic medicine in the State of Arizona.

6 3. The Board initiated case number MD-06-0307A after receiving notification of  
7 a malpractice settlement involving Respondent's care and treatment of a fifty-four year-old  
8 female patient ("CB").

9 4. On February 19, 2004 CB presented to Respondent complaining of a vaginal  
10 lesion. Respondent performed a vulvar biopsy that he interpreted as squamous cell  
11 carcinoma extending to the biopsy margin. Respondent informed CB she had vulvar  
12 cancer without obtaining a concurrent peer review. Respondent did not communicate his  
13 finding to CB's treating physician.

14 5. In March 2004 another physician performed surgery on CB's vulva based on  
15 Respondent's diagnosis of squamous cell carcinoma. On March 10, 2004 a pathologist  
16 ("Pathologist") in a different laboratory interpreted tissue biopsied during that surgery as  
17 having no carcinoma.

18 6. On May 12, 2004 a pathologists' consensus conference reviewed  
19 Respondent's original February 19, 2004 biopsy and found the reactive vulvar changes  
20 non-cancerous. A second consensus conference reviewed the biopsy on June 24, 2004  
21 and affirmed the non-cancerous diagnosis.

22 7. From December 2004 to April 2005 CB visited her gynecologist  
23 ("Gynecoloist") for chronic excoriation (skin irritation and abrasions) due to the second  
24 surgical excision that had not healed. Gynecologist prescribed medicinal creams including  
25

1 Estrace and Temovate for several months in order to close CB's excision by secondary  
2 intention.

3 8. The standard of care requires a pathologist, when diagnosing a malignancy  
4 in an uncommon location, to seek a concurrent peer review or communicate any  
5 uncertainty to the treating physician.

6 9. Respondent deviated from the standard of care because he failed to seek a  
7 concurrent peer review or communicate any uncertainty to the treating physician when he  
8 diagnosed a malignancy in an uncommon location.

9 10. Respondent's misdiagnosis led to CB undergoing an unnecessary vulvar  
10 excision resulting in chronic excoriation and closure by secondary intention.

#### 11 CONCLUSIONS OF LAW

12 1. The Board possesses jurisdiction over the subject matter hereof and over  
13 Respondent.

14 2. The conduct and circumstances described above constitute unprofessional  
15 conduct pursuant to A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might be  
16 harmful or dangerous to the health of the patient or the public.").

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

#### 21 ORDER

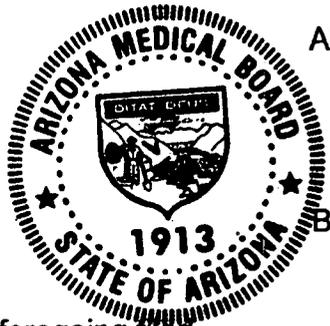
22 IT IS HEREBY ORDERED THAT:

23 1. Respondent is issued a Letter of Reprimand for misdiagnosing squamous  
24 cell carcinoma.

25 2. This Order is the final disposition of case number MD-06-0307A.

1 DATED AND EFFECTIVE this 9<sup>th</sup> day of February, 2008. 7

2  
3  
4 (SEAL)



ARIZONA MEDICAL BOARD

5  
6 By *Timothy C. Miller*  
7 TIMOTHY C. MILLER, J.D.  
8 Executive Director

9 ORIGINAL of the foregoing filed  
10 this 9<sup>th</sup> day of February, 2008 with:

11 Arizona Medical Board  
12 9545 E. Doubletree Ranch Road  
13 Scottsdale, AZ 85258

14 EXECUTED COPY of the foregoing mailed  
15 this 9<sup>th</sup> day of February, 2008 to:

16 Kenneth N. McCormick, M.D.  
17 Address of Record

18 *Timothy C. Miller*  
19 Investigational Review  
20  
21  
22  
23  
24  
25