

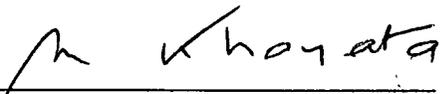
1 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
2 any other state or federal court.

3 5. Respondent acknowledges and agrees that, although the Consent
4 Agreement has not yet been accepted by the Board and issued by the Executive Director,
5 upon signing this agreement, and returning this document (or a copy thereof) to the
6 Board's Executive Director, Respondent may not revoke the acceptance of the Consent
7 Agreement. Respondent may not make any modifications to the document. Any
8 modifications to this original document are ineffective and void unless mutually approved
9 by the parties.

10 6. Respondent further understands that this Consent Agreement, once
11 approved and signed, is a public record that may be publicly disseminated as a formal
12 action of the Board and will be reported to the National Practitioner Data Bank and to the
13 Arizona Medical Board's website.

14 7. If any part of the Consent Agreement is later declared void or otherwise
15 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in
16 force and effect.

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MAZEN H. KHAYATA, M.D.

DATED: 12/17/03

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 20382 for the practice of
5 allopathic medicine in the State of Arizona.

6 3. The Board initiated case number MD-02-0786 after it received a complaint
7 letter dated from the State Compensation Fund of Arizona, Workers' Compensation
8 Insurance ("SCF of Arizona"). SCF of Arizona was concerned about the quality of care
9 rendered by Respondent to an injured worker.

10 4. On August 16, 2002, a 55 year-old male ("S.F.") presented as a referral
11 patient to Respondent for further evaluation of back pain and right leg pain. S.F.'s medical
12 history indicated that, in March of 2002, he had injured his back while working as a police
13 officer when he lifted a fifty-pound box out of the trunk of his police cruiser. S.F. had tried
14 physical therapy and medications without much improvement. S.F. indicated that 50% of
15 the pain was in his back and 50% pain shooting down his right leg and that he had
16 persistent pain on the right side. Prior to his visit to Respondent, a magnetic resonance
17 imaging ("MRI") was taken of S.F.'s lumbar spine and the findings of the MRI revealed
18 mild narrowing at the L4-5 level.

19 5. Respondent's examination and evaluation of S.F. revealed that he had mild
20 spinal stenosis with associated back pain and radiculopathy for six months without any
21 improvement. Respondent stated that S.F. did not want to try epidural cortisone
22 injections, or a myelogram, or an EMG study so Respondent discussed various options
23 with S.F. Respondent and S.F. agreed they would (1) proceed with a lumbar mylogram CT
24 to further evaluate his pain due to small findings on the MRI; (2) proceed with EMGs/nerve
25 conduction studies of the right lower extremity; and (3) follow-up in two weeks.

1 6. On August 19, 2003, S.F. presented to the Emergency Department at Desert
2 Samaritan Hospital ("E.R."). The E.R. physician ("E.R. Physician") noted that S.F. had
3 been seeing a chiropractor over the last 5 days and that the chiropractor had aggravated
4 S.F.'s herniated disk. E.R. Physician examined S.F.'s lower back and noted that it
5 revealed tenderness and spasm in the lower lumbar region. S.F. mapped out an L4-5 and
6 an L5-S1 nerve root distribution pattern going down the right leg. E.R. Physician
7 consulted Respondent and booked a computed tomography ("C.T.") lumbar myelogram
8 upon Respondent's request. The CT lumbar myelogram results revealed an L4-5
9 herniated disk on the right and a displacing L4 nerve root ganglion.

10 7. On August 20, 2003, Respondent performed a surgical procedure on S.F.
11 Respondent's operative report reflects that he performed a bilateral L4 and L5
12 hemilaminotomy, foraminotomy with nerve root decompression and microdiscectomy with
13 a bilateral approach on the right. On August 23, 2003, S.F. was discharged from the
14 hospital.

15 8. On August 26, 2003, S.F. returned to the E.R. with complaints of increasing
16 pain in his back and right leg. S.F. indicated to the E.R. physician ("E.R. Physician #2")
17 that the pain was similar to, if not worse, than the pain he experienced prior to his surgery.
18 E.R. Physician #2 consulted with Respondent who recommended that S.F. be discharged
19 home with pain medication and told to follow-up with Respondent.

20 9. On September 6, 2002, S.F. presented to Respondent with complaints of
21 persistent back pain and right thigh pain. S.F. denied left-sided pain. Respondent
22 examined S.F. and noted he should obtain a new MRI of the lumbar spine with and without
23 gadolinium. S.F. was to follow-up with Respondent after the MRI was complete.

24 10. On September 27, 2002, Respondent's MRI scan was performed without
25 contrast. The MRI report indicated that at L4-5 there was a non-enhancing right lateral

1 soft tissue narrowing the right neural foramen, and causing posterior displacement of the
2 right exiting L4 nerve root and no canal stenosis was identified. Also, the MRI report
3 indicated at L3-4 there was a bilateral laminectomy defect and post-surgical changes were
4 identified. However, there was no disk herniation, canal or neural foraminal stenosis. It
5 was noted in the MRI report that L5-S1 and L3-4 post-surgical changes were noted without
6 convincing MRI evidence for disk herniation.

7 11. On October 4, 2002, S.F. presented to Respondent for a follow-up visit. S.F.
8 indicated that he has bilateral thigh pain with radiation to the knee and the pain is in the
9 medial thigh on the left as well as right shin pain. Respondent noted that the repeat MRI
10 of the lumbar spine did not reveal any recurrence and there was suggestion of a mild disk
11 bulge at the L4-5 level. Respondent's plan for S.F. was to (1) proceed with a course of
12 physical therapy and lumbar epidural cortisone injections; (2) obtain electromyograms
13 ("EMGs") of the lower extremities and (3) follow-up in six weeks.

14 12. Sometime after October 4, 2002, S.F. was seen by another physician
15 ("W.S."). From the record of this visit, it appears that W.S. examined S.F. on behalf of
16 SCF of Arizona. The Board is in possession of the report dated 10/31/02 that W.S.
17 prepared and submitted to SCF of Arizona ("Report"). S.F.'s most recent MRI scan
18 reflected persistence of disk bulge at L4-5 and some mild narrowing of the foramina
19 bilaterally at L4-5. Report indicates that the surgical procedure performed by Respondent
20 on S.F. appears to have been an L3-4 laminotomy and L5-S1 laminectomy. These were
21 not the levels that Respondent established with S.F. that were to be operated on prior to
22 the surgery. Respondent told S.F. that the surgical procedure was to take place at level
23 L4-5 to relieve S.F.'s leg pain.

24 13. Respondent denies that he operated on the L3-4 level and L5S-1.
25 According to Respondent he was unable to perform a small straightforward laminectomy

1 because S.F. had a lot of muscles. Respondent states that when the discectomy was
2 exposed for the microdiscectomy, he had to dissect the muscle off the mid-line and put a
3 retractor to hold it in place. Respondent performed this procedure under x-ray guidance.
4 A radiopaque marker was put in place and then a cross-table x-ray was performed.
5 Respondent stated that he could then see that he was at the L3-4 level that was too high
6 and went through the procedure of placing a radiopaque marker and performing another x-
7 ray. Respondent then noted that he was too low at the L5-S1 level. During this
8 procedure, L3-4 level was exposed as well as the L5S-1 level. Respondent stated he was
9 then able to locate the L4-5 level because it was exposed at the same time as the L5S-1
10 level and he was able to perform the appropriate procedure at the correct level.
11 Respondent stated that the upper and lower levels would show that they have been
12 worked on when the lamina and spinous process of exposure takes place. Respondent
13 stated that he did not go in the disk itself nor did he go into the thecal sac. The only place
14 that he operated on was in the middle in between L3-4 and L5-S1 because those were his
15 markers. Respondent further states that he opened the lamina at L4-5 only.

16 14. The standard of care required Respondent to perform surgery on the
17 appropriate level, as determined by radiological studies and/or physical examination.

18 15. Respondent failed to meet the accepted standard of care because he did not
19 perform surgery on the appropriate level, as determined by radiological studies and/or
20 physical examination.

21 16. S.F. was harmed because the appropriate surgery was not performed,
22 leaving him with a persistent, painful herniated disc at L4-5.

23 17. On December 3, 2003, Respondent completed a seven and a half hour
24 Category I Continuing Medical Education course in magnetic resonance imaging ("MRI").
25

1 CONCLUSIONS OF LAW

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

4 2. The conduct and circumstances described above constitute unprofessional
5 conduct pursuant to A.R.S. § 32-1401(24)(II) - ("conduct that the board determines is
6 gross negligence, repeated negligence or negligence resulting in harm to or death of a
7 patient.")

8 ORDER

9 IT IS HEREBY ORDERED THAT:

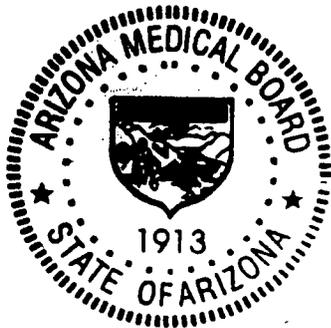
10 1. Respondent is issued a Letter of Reprimand for performing a bilateral
11 laminotomy at the wrong level.

12 2. Respondent shall pay a civil penalty in the amount of \$1,000.00 within 60
13 days.

14 3. This Order is the final disposition of case number MD-02-0786.

15 DATED AND EFFECTIVE this 14th day of JANUARY, 2004.

16
17 (SEAL)



18 ARIZONA MEDICAL BOARD

19 By Barry Cassidy
20 BARRY A. CASSIDY, Ph.D., PA-C
21 Executive Director

22 ORIGINAL of the foregoing filed this
23 14 day of JANUARY, 2004 with:

24 Arizona Medical Board
25 9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

1 EXECUTED COPY of the foregoing mailed by
2 Certified Mail this 14th day of January, 2004 to:

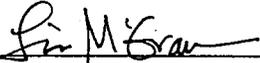
3 Paul J. Giancola, Esq.
4 Snell & Wilmer L.L.P.
5 400 E Van Buren
6 Phoenix, AZ 85004-2202

7 EXECUTED COPY of the foregoing mailed
8 this 14th day of January, 2003 to:
9 4

10 Mazen H. Khayata, M.D.
11 5501 N. 19th Avenue, Suite 102
12 Phoenix, Arizona 85015-2451

13 EXECUTED COPY of the foregoing
14 hand-delivered this 14th day of
15 January, 2004, to:

16 Sandra Waitt, Management Analyst
17 Arizona Medical Board
18 9545 E. Doubletree Ranch Road
19 Scottsdale, AZ 85258

20 
21 Information Services