

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

3 **MALCOLM G. WILKINSON, M.D.**

4 License No. 21001

5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-06-0683A

**CONSENT AGREEMENT FOR
LETTER OF REPRIMAND,
PROBATION AND PRACTICE
RESTRICTION**

7 **CONSENT AGREEMENT**

8 By mutual agreement and understanding, between the Arizona Medical Board
9 ("Board") and Malcolm G. Wilkinson, 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 he has the right to consult with legal counsel regarding this
14 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.
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1 5. This Consent Agreement does not constitute a dismissal or resolution of
2 other matters currently pending before the Board, if any, and does not constitute any
3 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any
4 other pending or future investigation, action or proceeding. The acceptance of this
5 Consent Agreement does not preclude any other agency, subdivision or officer of this
6 State from instituting other civil or criminal proceedings with respect to the conduct that is
7 the subject 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)
15 to 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
23 will 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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10. If any part of the Consent Agreement is later declared void or otherwise unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force and effect.

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.

12. ***Respondent has read and understands the condition(s) of probation.***


MALCOLM G. WILKINSON, M.D.

DATED: 5/1/07

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2 **FINDINGS OF FACT**

3 1. The Board is the duly constituted authority for the regulation and control of
4 the practice of allopathic medicine in the State of Arizona.

5 2. Respondent is the holder of license number 21001 for the practice of
6 allopathic medicine in the State of Arizona.

7 3. The Board initiated case number MD-06-0683A after receiving notification of
8 a malpractice settlement involving Respondent's care and treatment of a sixty-five year-old
9 female patient ("OP").

10 4. On October 12, 2004, Respondent saw OP for a chief complaint of
11 gallstones and abdominal pain. Respondent noted a history of uterine cancer treated with
12 chemotherapy and radiation in 1990 and that OP had a subsequent laparotomy for bowel
13 obstruction due to adhesions. Respondent's impression was biliary colic and he noted OP
14 would benefit from a cholecystectomy. Respondent's note indicated he would likely
15 perform a laparoscopic cholecystectomy, but noted that given OP's history of previous
16 surgery and radiation therapy, it may not be possible to perform the cholecystectomy
17 laparoscopically and he may need to convert to an open laparotomy.

18 5. On October 25, 2004, Respondent performed a closed cholecystectomy. The
19 pathology report confirmed chronic cholecystitis with cholesterolosis and cholelithiasis.

20 6. The next day OP had increased abdominal pain. Respondent noted an x-ray
21 demonstrated free air under the right hemidiaphragm consistent with intestinal leak.

22 7. Respondent returned OP to the operating room on October 26, 2004, for an
23 exploratory laparotomy and small bowel resection for an iatrogenic small bowel injury with
24 enterocutaneous fistula. Respondent's postoperative note described the presence of
25 bilious fluid at the umbilicus and extending caudally towards the pelvis in the midline. The
fluid emanated from an enterostomy in the small intestine lying approximately midway

1 between the umbilicus and pubis and extending up and releasing through the umbilical
2 incision. Respondent removed extensive abdominal adhesions and he noted evidence of
3 "little other enteric contamination within the abdominal cavity." Respondent performed a
4 small bowel resection, but he did not mention that any part of the colon was examined
5 during the abdominal exploration.

6 8. On November 4, 2004, nine days following OP's exploratory laparotomy, the
7 surgeon ("Surgeon") covering for Respondent noted OP had stool emanating from the
8 abdominal wound. Surgeon thereafter assumed OP's care.

9 9. On November 6, 2004, Surgeon took OP to the operating room for
10 exploratory surgery and he noted an injury to the midtransverse colon as it looped into the
11 midportion of the abdomen and a 2.5 – 3 cm small abscessed cavity that was cultured and
12 drained. This indicates the abscess may have been associated with the transverse colon
13 injury OP suffered during the closed cholecystectomy performed by Respondent on
14 October 25, 2004. The transverse colon injury was not discovered by Respondent during
15 his exploratory laparotomy on October 26, 2004 and therefore was not repaired. Surgeon
16 also noted dehiscence and leakage from the small bowel anastomosis that had been
17 performed by Respondent on October 26, 2004. Surgeon performed two separate small
18 bowel resections removing 75 cm of OP's small bowel and 35 cm of her colon.

19 10. OP had an extended postoperative hospitalization with a prolonged
20 postoperative ileus. Surgeon's discharge summary indicated OP's discharge diagnosis
21 included chronic diarrhea status post bowel resection with radiation enteritis.

22 11. The standard of care requires a physician to perform either a laparoscopic
23 cholecystectomy utilizing an open cannulation technique or an open cholecystectomy in a
24 patient with symptomatic gallbladder disease and a history of multiple laparotomies
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1 including a laparotomy for a small bowel obstruction and a history of radiation therapy to
2 the abdomen.

3 12. Respondent deviated from the standard of care because he failed to utilize
4 an open cannulation technique or an open cholecystectomy in the performing a
5 laparoscopic cholecystectomy on OP who had a previous operation for small bowel
6 obstruction and has a history of radiation therapy to the abdomen wall. Respondent
7 performed a closed cholecystectomy.

8 13. If a patient develops an iatrogenic bowel injury following laparoscopic
9 cholecystectomy, the standard of care requires a physician to perform a complete
10 exploration of the abdomen to verify that all bowel or colon injuries have been located and
11 repaired.

12 14. Respondent deviated from the standard of care because he failed to locate
13 the transverse colon injury when he performed an exploratory laparotomy on OP on
14 October 26, 2004.

15 15. Respondent's failures resulted in OP developing an iatrogenic perforation of
16 the small intestine and the transverse colon that required two subsequent operations to
17 repair; losing 75 cm of her small bowel and 35 cm of her right colon; and suffering chronic
18 diarrhea.

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)(q) ("[a]ny conduct or practice that is or might be
24 harmful or dangerous to the health of the patient or the public.") and A.R.S. § 32-
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1 1401(27)(II) (“[c]onduct that the board determines is gross negligence, repeated
2 negligence or negligence resulting in harm to or death of a patient.”).

3 **ORDER**

4 IT IS HEREBY ORDERED THAT:

5 1. Respondent is issued a Letter of Reprimand for failing to appropriately
6 perform a laparoscopic cholecystectomy and for failing to correct all the patient’s injuries
7 during the second surgery.

8 2. Respondent is placed on probation for **fifteen years** with the following terms
9 and conditions:

10 A. Respondent shall not practice general surgery for **fifteen years** and
11 until he applies to the Board and receives permission to do so. The Board may require any
12 combination of Staff approved psychiatric and/or psychological evaluations or successful
13 passage of the Special Purpose licensing Examination or other competency
14 examination/evaluation or interview it finds necessary to assist it in determining
15 Respondent’s ability to safely and competently return to the active practice of general
16 surgery.

17 B. Obey All Laws

18 Respondent shall obey all state, federal and local laws, all rules governing the
19 practice of medicine in Arizona, and remain in full compliance with any court order criminal
20 probation, payments and other orders.

21 C. Tolling

22 In the event Respondent should leave Arizona to reside or practice outside the
23 State or for any reason should Respondent stop practicing medicine in Arizona,
24 Respondent shall notify the Executive Director in writing within ten days of departure and
25 return or the dates of non-practice within Arizona. Non-practice is defined as any period of

1 time exceeding thirty days during which Respondent is not engaging in the practice of
2 medicine. Periods of temporary or permanent residence or practice outside Arizona or of
3 non-practice within Arizona, will not apply to the reduction of the probationary period.

4 3. This Order is the final disposition of case number MD-06-0683A.

5 DATED AND EFFECTIVE this 8th day of June, 2007.



ARIZONA MEDICAL BOARD

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

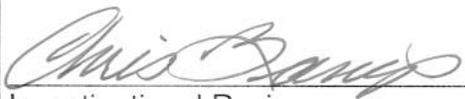
15 ORIGINAL of the foregoing filed
16 this 8th day of June, 2007 with:

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

20 EXECUTED COPY of the foregoing mailed
21 this 8th day of June, 2007 to:

22 Malcolm G. Wilkinson, M.D.
23 Address of Record

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Investigational Review