

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

JEROME KOLESKI, M.D.

Holder of License No. 24504
For the Practice of Allopathic Medicine
In the State of Arizona.

Case No. MD-04-0493A

**CONSENT AGREEMENT FOR
DECREE OF CENSURE**

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Jerome Koleski, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

1. Respondent acknowledges that he has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges that he has the right to consult with legal counsel regarding this matter and has done so or chooses not to do so.

2. Respondent understands that by entering into this Consent Agreement, he voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. Respondent acknowledges and understands that this Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. All admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by Respondent are not intended or made for any other use, such as in the context of another state or federal government

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 upon signing this Consent
4 Agreement, and returning this document (or a copy thereof) to the Board's Executive
5 Director, Respondent may not revoke acceptance of the Consent Agreement. Respondent
6 may not make any modifications to the document. Any modifications to this original
7 document are ineffective and void unless mutually approved by the parties.

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

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

15 *Jerome Koleski MD*
16 GEROME KOLESKI, M.D.

DATED: *May 24, 2005*

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 24504 for the practice of
5 allopathic medicine in the State of Arizona.

6 3. The Board initiated case number MD-04-0493A after receiving notification of
7 a malpractice settlement involving Respondent's care and treatment of a 67 year-old
8 female patient ("F.D.").

9 4. On or about August 28, 1998, F.D. presented to Respondent, her primary
10 care physician, with a palpable left breast mass. Respondent noted a hard irregular left
11 breast lump of about 2 cm in diameter. Respondent also noted that the mass "feels like
12 normal ductal tissue."

13 5. Between August 31, 1998 and December 1, 1999, Respondent ordered five
14 mammograms of F.D.'s left breast. The mammograms were repeatedly read as benign.
15 During this time, Respondent did not perform clinical breast examinations on F.D.

16 6. Respondent stated that he did not refer F.D. for a biopsy "because she did
17 not have insurance" and the out of pocket expenses would have cost \$350 to \$600.

18 7. In 2000, F.D. obtained Medicare insurance. At that time, Respondent
19 referred F.D. to an outside mammographic facility. The radiologist read F.D.'s
20 mammogram as highly suspicious and recommended an immediate biopsy. The biopsy
21 was positive for poorly differentiated carcinoma.

22 8. On September 16, 2000, F.D. underwent a modified radical mastectomy with
23 lymph node dissection that showed some positive lymph nodes.

24 9. The standard of care for a patient with a palpable breast mass required
25 Respondent to conduct a thorough diagnostic workup including ultrasound, needle biopsy

1 and further appropriate surgical techniques to obtain a reliable tissue diagnosis and/or
2 refer the patient to a specialist.

3 10. Ten to fifteen percent of all breast cancers are not detected by mammogram.
4 A careful clinical breast examination is also necessary. A palpable breast mass that is not
5 seen on mammogram should have a thorough diagnostic workup including ultrasound and
6 needle biopsy and close followup.

7 11. Respondent deviated from the accepted standard of care because he failed
8 to perform a thorough diagnostic workup of a palpable breast mass and because he
9 performed an inadequate followup of the mass.

10 12. F.D. was harmed because she underwent a modified radical mastectomy
11 with lymph node dissection for a breast mass that tested positive for poorly differentiated
12 carcinoma.

13 **CONCLUSIONS OF LAW**

14 1. The Board possesses jurisdiction over the subject matter hereof and over
15 Respondent.

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

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

23 ...
24 ...
25 ...

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Decree of Censure for repeated failure to perform a diagnostic workup of a palpable breast mass and for failure to proceed with a biopsy.

2. This Order is the final disposition of case number MD-04-0493A.

DATED AND EFFECTIVE this 6 day of July, 2005.

(SEAL)



ARIZONA MEDICAL BOARD

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

ORIGINAL of the foregoing filed this 7 day of July 2005 with:

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

EXECUTED COPY of the foregoing mailed this 7 day of July, 2005 to:

Jerome Koleski, M.D.
Address of Record

Patricia Reynolds
Quality Assurance