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8 **BEFORE THE ARIZONA MEDICAL BOARD**

9  
10 In the Matter of

11 **MITCHELL S. WAGNER, M.D.**

12 **Holder of License No. 27272**  
For the Practice of Allopathic Medicine  
13 In the State of Arizona

14 Respondent

Case No. MD-02-0450

**CONSENT AGREEMENT AND ORDER  
FOR LETTER OF REPRIMAND AND  
PROBATION**

15 **CONSENT AGREEMENT**

16 In the interest of a prompt and judicious settlement of the above-captioned matter before  
17 the Arizona Medical Board ("Board") and consistent with the public interest, statutory  
18 requirements and responsibilities of the Board and pursuant to A.R.S. § 41-1092.07(F)(5) and  
19 A.R.S. § 32-1401 *et seq.*, Mitchell S. Wagner, M.D., holder of license number 27272  
20 ("Respondent") and the Board enter into the following Recitals, Findings of Fact, Conclusion s  
21 of Law and Order ("Consent Agreement") as the final disposition of this matter.

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

1 of Fact contained herein. Respondent voluntarily enters into this Consent Agreement for the  
2 purpose of avoiding the expense and uncertainty of an administrative hearing.

3 2. Respondent understands that he has a right to a public administrative hearing  
4 concerning each allegation set forth in the above-captioned matter, at which administrative  
5 hearing he could present evidence and cross-examine witnesses. By entering into this Consent  
6 Agreement, Respondent freely and voluntarily relinquishes all rights to such an administrative  
7 hearing, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or any  
8 other administrative and/or judicial action, concerning the matters et forth herein.

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

13 4. Respondent acknowledges and understands that this Consent Agreement is not  
14 effective until approved by the Board and signed by its Executive Director or designee.

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

20 6. Respondent understands that this Consent Agreement deals with Board  
21 Investigations Case No. **MD-02-0450** involving allegations of unprofessional conduct against  
22 Respondent. The investigation into these allegations against Respondent shall be concluded  
23 upon the Board's adoption of this Consent Agreement.

24 7. Respondent understands that this Consent Agreement does not constitute a  
25 dismissal or resolution of other matters currently pending before the Board, if any, and does not

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

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

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

15 10. Respondent understands that any violation of this Consent Agreement constitutes  
16 unprofessional conduct under A.R.S. § 32-1401(27)(r) ([v]iolating a formal order, probation,  
17 consent agreement or stipulation issued or entered into by the board or its executive director  
18 under the provisions of this chapter) and shall result in disciplinary action under A.R.S. § 32-  
19 1451 *et seq.*

20 11. If any part of the Consent Agreement is later declared void or otherwise  
21 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force and  
22 effect.

23 12. The parties mutually understand and agree that this order constitutes a final binding  
24 decision of this matter under investigation by the Board and referenced above and throughout  
25 this Consent Agreement.

1 Reviewed and accepted this \_\_\_\_ day of \_\_\_\_\_, 2005 by:

2  
3  1/20/05

4 Mitchell S. Wagner, M.D.  
5 Respondent

6 Reviewed and accepted this 26 day of January, 2005 by:

7  
8 

9 Paul Giancola, Esq.  
10 Attorney for Respondent

11 **FINDINGS OF FACT**

12 1. The Board is the duly constituted authority for regulating and controlling the practice  
13 of allopathic medicine in the State of Arizona.

14 2. Respondent is the holder of license number **27272** for the practice of allopathic  
15 medicine in the State of Arizona.

16 3. The Board initiated case number **MD-02-0450** after the Board was notified on or  
17 about June 7, 2002, pursuant to A.R.S. § 12-570, of a confidential monetary settlement by and  
18 between Respondent, C.P. and Respondent's insurer, MedPro. The resulting AMB investigation  
19 established the facts and circumstances as set forth herein.

20 4. On or about February 15, 1999, patient C.P., an eighteen (18) year old boy, injured  
21 his left knee while skateboarding ("C.P.").

22 5. On or about June 14, 1999, Respondent first examined C.P. and diagnosed a  
23 probable grade III tear of the anterior cruciate ligament ("ACL") in C.P.'s left knee. Respondent  
24 recommended surgery to repair the left ACL in order for C.P. to be physically active in the future,  
25 including involvement in sports ("ACL Reconstruction").

1 Respondent recommended surgery to repair the left ACL in order for C.P. to be physically active  
2 in the future, including involvement in sports ("ACL Reconstruction").

3 6. On or about June 25, 1999 at the Maricopa Medical Center, Respondent  
4 performed the ACL Reconstruction on C.P.

5 7. During the ACL Reconstruction, the screw which Respondent inserted into C.P.'s  
6 left femur split the bone during the left femoral insertion. Respondent realized that as a result of  
7 this unfortunate circumstance, the bone block was now loose. Further, the screw had become  
8 misaligned in C.P.'s left femur.

9 8. Respondent spent the next two (2) hours removing the screw from C.P.'s left  
10 femur.

11 9. Following retrieval of the screw, Respondent reversed the graft and, again, placed  
12 a screw into the femur and at the tibial insertion, stapled the graft.

13 10. During the ACL Reconstruction, Respondent utilized a tourniquet inflated to 300  
14 millimeters of mercury.

15 11. The tourniquet was let down three (3) times during the ACL Reconstruction to  
16 allow for reperfusion of the soft tissues.

17 12. The first tourniquet "let down" occurred two (2) hours into the ACL  
18 Reconstruction and the left leg was allowed to reperfuse for nineteen (19) minutes.

19 13. The second tourniquet "let down" occurred two (2) hours later into the ACL  
20 Reconstruction and the left leg was allowed to reperfuse for forty-one (41) minutes.

21 14. The third tourniquet "let down" occurred two (2) hours and thirty-one (31)  
22 minutes later into the ACL Reconstruction.

23 15. Due to the complications described herein, the ACL Reconstruction took a total of  
24 approximately ten (10) hours to complete.  
25

1 16. C.P.'s family was kept informed of the delays throughout the ACL  
2 Reconstruction.

3 17. Respondent noted that post-operatively, C.P. suffered from a sciatic neuropathy of  
4 the left leg with some indication of improvement upon discharge on June 29, 1999.

5 18. During post-operative office visits with C.P., Respondent noted that C.P.  
6 appeared to be developing symptoms associated with reflex sympathetic dystrophy ("RSD").

7 19. Respondent recommended aggressive physical therapy treatment.

8 20. The standard of care dictates that a tourniquet should not be applied in excess of  
9 two (2) hours, particularly when there are prior applications of the tourniquet to the limb in  
10 question.

11 21. Respondent fell below the standard of care when he applied the tourniquet to  
12 C.P.'s left leg for two (2) hours and thirty-one (31) minutes, particularly in light of the fact that  
13 during the ACL Reconstruction Respondent two (2) times previously applied the tourniquet to  
14 C.P.'s left leg.

15  
16 **CONCLUSIONS OF LAW**

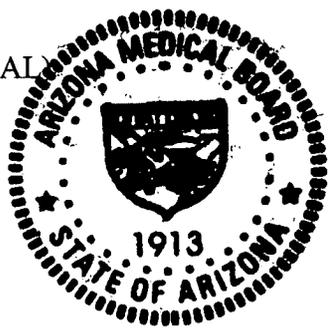
17 1. The Board possesses jurisdiction over the subject matter hereof and over  
18 Respondent.

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

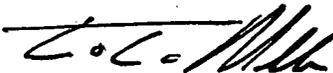
22 3. The conduct and circumstances described above constitute unprofessional conduct  
23 pursuant to A.R.S. § 32-1401(27)(ll) - ("Conduct that the Board determines is gross negligence,  
24 repeated negligence or negligence resulting in harm to or the death of a patient.")



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By 

TIMOTHY C. MILLER, J.D.  
Executive Director

**EXECUTED ORIGINAL** of the foregoing filed this 10<sup>th</sup> day of March, 2005 with:

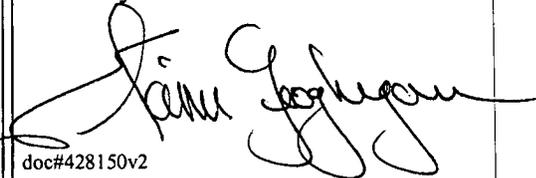
Arizona Medical Board  
9545 East Doubletree Ranch Road  
Scottsdale, Arizona 85258

**EXECUTED COPY** of the foregoing mailed  
this 10<sup>th</sup> day of MARCH, 2005 to:

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