

1 BEFORE THE ARIZONA MEDICAL BOARD

2 In the Matter of

3 **ALBERT F. OLIVIER, M.D.**

4 Holder of License No. 9954
5 For the Practice of Allopathic Medicine
6 In the State of Arizona

Case No. MD-05-0553A

**CONSENT AGREEMENT FOR
LETTER OF REPRIMAND**

7 **CONSENT AGREEMENT**

8 By mutual agreement and understanding, between the Arizona Medical Board
9 ("Board") and Albert F. Olivier, M.D. ("Respondent"), the parties agreed to the following
10 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) ("violating 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.

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 ALBERT F. OLIVIER, M.D.

DATED: April 6, 2007

FINDINGS OF FACT

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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 9954 for the practice of
5 allopathic medicine in the State of Arizona.

6 3. The Board initiated case number MD-05-0553A after receiving notification of
7 a malpractice settlement involving Respondent's care and treatment of a sixty-five year-old
8 male patient ("LT").

9 4. On July 25, 2002 LT presented to Respondent complaining of leg and hip
10 pain associated with walking. Respondent noted LT had a history of coronary artery pass
11 and an abdominal aortography that revealed an abdominal aortic aneurysm measuring
12 2.5 cm with bilateral moderate superficial femoral artery disease. Respondent examined
13 LT's upper extremities. Respondent did not examine LT's lower extremities even though
14 LT presented with claudication type symptoms. Respondent ordered a computed
15 tomography (CT) scan of the lumbosacral spine, spiral scan of the abdominal aorta and an
16 arterial Doppler study of LT's lower extremities and carotid duplex aortography with distal
17 flow studies. The CT scan revealed a mild aneurismal dilation of the aorta measuring
18 approximately 3.2 cm. Respondent noted he discussed the results with LT and LT agreed
19 to proceed with an angiography. On August 26, 2002 LT presented to the hospital to have
20 his blood drawn for surgery, but Respondent canceled the surgery because LT suffered
21 from a cough and lung congestion. Respondent noted LT continued to suffer from
22 "[p]ersistent occasional lower back pain."

23 5. On October 8, 2002 Respondent performed surgery. In the consent form
24 signed by both Respondent and LT the operative procedure is described as "endoluminal
25 stent graft placement." However, Respondent's operative report described an open repair

1 of an atherosclerotic cylindrical saccular abdominal aortic aneurysm measuring 4.2 cm in
2 greatest diameter with a 20 x 10 mm bifurcated hemashield graft. Respondent did not
3 obtain informed consent from LT describing the possibility of conversion from an
4 endoluminal procedure to an open repair procedure. Also, there was no documentation of
5 any discussion between Respondent and LT from August 26, 2002 to the date of surgery
6 regarding the open repair procedure. However, Respondent's dictated notes on October 9,
7 2002 stated that prior to surgery, he discussed with LT's wife and daughter two major
8 diagnoses deriving from vascular and orthopedic problems, namely aortic aneurysm with
9 bilateral femoral popliteal tibial stenosis, bulging discs, and multiple spinal stenosis and
10 noted "[t]hus staged surgeries are to be considered for both diagnoses with the initial
11 aneurysmectomy. Benefits and potential complications (including but not limited to vital
12 organs such as brain, heart, liver, lungs, and kidneys as well as circulatory profusion) were
13 discussed with no promises, guarantees, or prophecies given."

14 6. Post-operatively on October 9, 2002 at approximately 2:30 p.m. LT suffered
15 a cardiopulmonary arrest and was seen by a cardiopulmologist ("Cardiopulmologist").
16 Cardiopulmologist noted a drop in LT's hemoglobin through the afternoon without any
17 overt signs of bleeding. At 4:35 p.m. LT suffered another cardiopulmonary arrest. Hospital
18 staff successfully resuscitated LT, but over the next eight hours LT developed progressive
19 hypotension in spite of inotropic support.

20 7. LT died on October 10, 2002 at 5:43 a.m. The autopsy report described the
21 abdominal aorta as demonstrating surgical graft repair and showed approximately 300 ml
22 of clotted blood in the soft tissue at left iliac artery bypass. A microscopic examination of
23 the left iliac artery at surgery showed blood leakage and an acute inflammation.

24 8. A physician is required to maintain adequate legible medical records
25 containing, at a minimum, sufficient information to identify the patient, support the

1 diagnosis, justify the treatment, accurately document the results, indicate advice and
2 cautionary warnings provided to the patient and provide sufficient information for another
3 practitioner to assume continuity of the patient's care at any point in the course of
4 treatment. A.R.S. § 32-1401(2). Respondent's records were inadequate because he did
5 not document the possibility of conversion from an endoluminal procedure to an open
6 repair procedure. Also, Respondent did not document of any discussion between himself
7 and LT from August 26, 2002 to the date of surgery regarding the open repair procedure.

8 9. The standard of care requires a physician to observe an abdominal aortic
9 aneurysm measuring less than 4.5 cm in diameter and only operate if an aortic aneurysm
10 reaches 4.5 cm. The standard of care requires a physician to appropriately repair an
11 abdominal aortic aneurysm when indicated. The standard of care requires a physician to
12 obtain informed consent prior to performing surgery.

13 10. Respondent deviated from the standard of care because he did not observe
14 an aortic aneurysm of 4.2 cm in diameter and instead performed surgery. Respondent
15 deviated from the standard of care because he did not have adequate indications to
16 perform the surgery. Respondent deviated from the standard of care because he did not
17 obtain LT's informed consent to repair the aneurysm.

18 11. Respondent performed an unnecessary surgery leading to LT's death.

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)(e) ("[f]ailing or refusing to maintain adequate
24 records on a patient") and A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or
25 might be harmful or dangerous to the health of the patient or the public") and A.R.S. § 32-

1 1401(27)(II) (“[c]onduct that the board determines is gross negligence, repeated
2 negligence or negligence resulting in harm to or the death of a patient.”).

3 **ORDER**

4 IT IS HEREBY ORDERED THAT:

5 1. Respondent is issued a Letter of Reprimand for performing surgery without
6 adequate indications, for failure to obtain informed consent, and for failure to maintain
7 adequate records.

8 2. This Order is the final disposition of case number MD-05-0553A.

9 DATED AND EFFECTIVE this 13th day of April, 2007.

10
11 (SEAL)



ARIZONA MEDICAL BOARD

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13
14 By 

TIMOTHY C. MILLER, J.D.
Executive Director

15 ORIGINAL of the foregoing filed
16 this 13th day of April, 2007 with:

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

17
18 EXECUTED COPY of the foregoing mailed
19 this 13th day of April, 2007 to:

20 Albert F. Olivier
21 Address of Record

22 
23 Investigational Review