BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **KULBHUSHAN SHARMA, M.D.** Holder of License No. 22286 For the Performance of Healthcare Tasks In the State of Arizona	Case No. MD-12-1050A **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR LETTER OF REPRIMAND AND PROBATION**

The Arizona Medical Board ("Board") considered this matter at its public meeting on February 5, 2014. Kulbhushan Sharma, M.D. ("Respondent") appeared before the Board for a formal interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue Findings of Fact, Conclusions of Law and Order after due consideration of the facts and law applicable to this matter.

FINDINGS OF FACT

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

2. Respondent is the holder of license number 22286 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-12-1050A after receiving a complaint regarding Respondent's care and treatment of a 27 year-old female patient ("DM"). The complaint alleged that Respondent failed to properly perform a breast augmentation.

4. On September 19, 2011, Respondent initially saw and examined DM. She returned on April 12, 2012 for submuscular placement of saline breast implants. DM was seen in postoperative follow up and on May 11, 2012, Respondent noted a "double bubble" deformity on the right breast. On May 21, 2012, Respondent documented that the "double bubble" was still present in the right breast, and he planned to explore the breast but did not mention timing or specifics of his surgical plan.

5. On June 1, 2012, Respondent noted that the swelling on the right breast was improving, but not better. Respondent documented that he may need to take the implant out and reposition it, but did not mentioned how this was going to be done. DM was returned to surgery that same day for correction of a "double bubble" deformity. DM was seen in postoperative follow up and on June 26, 2012, Respondent dictated an office note indicating that the deformity was gone and DM was happy with the surgical result. This is in contradiction to the left lateral view of DM's breast dated June 26, 2012, which clearly showed the deformity. DM subsequently sought opinions from two other surgeons about possible correction of this complication.

6. After the Board ordered him to do so, Respondent participated in Phase I of the Physician Assessment and Clinical Education ("PACE") Program on April 18-19, 2013. His evaluators found that his overall performance of the two-day assessment was varied. Specifically, Respondent demonstrated familiarity with concepts of revisional breast surgery during his oral exam. One of his patient chart notes was found to have not met the standard of care and the remaining six charts were barely satisfactory, according to the PACE evaluators. Additionally, Respondent diagnosed seven of the eight patients correctly, and though he performed best on the surgical cases, his management was adequate in all but one case. PACE determined that based on Respondent's performance during Phase I of PACE, he did not appear to pose an imminent threat to patient safety. PACE recommended that Respondent return for Phase II in order to complete the assessment process and obtain an official final grade.

7. Respondent returned for Phase II of PACE on September 23-27, 2013. His evaluators determined that overall, Respondent's performance during Phase II was satisfactory. PACE reported that Respondent demonstrated an adequate fund of knowledge needed for safe care of candidates for breast surgery and an expertise

pertaining to the limited anesthetic breast surgery practice. The PACE report indicated that Respondent acknowledged and recognized his limited competence and lack of expertise that would allow him to handle complex cases. PACE recommended that Respondent continue to limit his breast surgery procedures to simple primary augmentations without any compounding conditions.

8. PACE determined that Respondent passed the assessment with recommendations, signifying a performance during which minor deficiencies were noted that do not affect the physician's ability to practice safely, but may have an effect on optimal performance.

9. The standard of care for a patient with grade 3 ptosis of the breast who does not want a mastopexy scar requires a physician to offer the patient a subglandular augmentation and inform her that she is not a candidate for a submuscular augmentation alone without mastopexy.

10. Respondent deviated from the standard of care by failing to counsel DM appropriately regarding mastopexy and submuscular augmentation, allowing DM the opportunity to make an incorrect decision.

11. The standard of care in performing a submuscular breast augmentation requires a physician to position the implant in the central breast mound.

12. Respondent deviated from the standard of care by incorrectly placing the implant where the ptotic breast was located.

13. The standard of care requires a physician to avoid performing elective re-operative surgery until a minimum of three months after the initial procedure.

14. Respondent deviated from the standard of care by re-operating on DM at 5 weeks and 6 days following the initial surgery.

15. The standard of care when using lidocaine as a tumescent solution in an office setting during placement of a submuscular augmentation requires a physician to be prepared to treat either inadvertent IV injection of lidocaine with resultant lidocaine toxicity and allergic reaction to the lidocaine.

16. Respondent deviated from the standard of care by using only tumescent solution for local anesthesia and failing to have adequate contingency in the event of either inadvertent IV injection of tumescent or allergic reaction to lidocaine.

17. DM required revision surgery performed by Respondent due to inappropriate placement of her breast implants. DM had malpositioned implants with poor support of the right inframammary fold that causes DM chronic low grade pain and discomfort.

18. DM requires further surgery to correct the current incorrect placement of the implant.

CONCLUSIONS OF LAW

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

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401 (27)(e) ("[f]ailing of refusing to maintain adequate records on a patient.").

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

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand.

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

a. Practice Restriction

Respondent's breast cosmetic surgery procedures shall be limited to simple primary augmentation without any compounding conditions.

b. Practice Monitor

Within 30 days of the effective date of this order, Respondent shall enter a contract with a Board pre-approved monitoring company ("Monitor") to provide all monitoring services. Respondent shall bear all costs of monitoring requirements and services. The Monitor shall conduct quarterly chart reviews. The purpose of the chart review is to determine if Respondent is compliant with the practice restriction requirement of probation. Based upon the chart review, the Board retains jurisdiction to take additional disciplinary or remedial action.

c. Obey All Laws

Respondent shall obey all state, federal and local laws, all rules governing the performance of health care tasks in Arizona, and remain in full compliance with any court order criminal probation, payments and other orders.

d. Tolling

In the event Respondent should leave Arizona to reside or perform health care tasks outside the State or for any reason should Respondent stop performing health care tasks in Arizona, Respondent shall notify the Executive Director in writing within ten days of departure and return or the dates of non-performance within Arizona. Non-performance is defined as any period of time exceeding thirty days during which Respondent is not engaging in the performance of health care tasks. Periods of temporary or permanent residence or performance of health care tasks outside Arizona or of non-performance of health care tasks within Arizona, will not apply to the reduction of the probationary period.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

DATED AND EFFECTIVE this 21st day of April, 2014.

ARIZONA MEDICAL BOARD

By C. Lloyd Vest

C. Lloyd Vest, II
Executive Director

EXECUTED COPY of the foregoing mailed this 21st day of April, 2014 to:

Kulbhushan Sharma, M.D.
Address of Record

ORIGINAL of the foregoing filed this 21st day of April, 2014 with:

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

Mary Baker
Arizona Medical Board Staff

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **KULBHUSHAN SHARMA, M.D.** Holder of License No. 22286 For the Performance of Healthcare Tasks In the State of Arizona	Case No. MD-12-1050A **ORDER DENYING RESPONDENT'S REQUEST FOR A REVIEW**

On May 23, 2014, the Arizona Medical Board ("Board") received Kulbhushan Sharma's ("Respondent") Request for Review or Rehearing regarding the Board Order dated April 21, 2014. *See* Attachment 1. On June 11, 2014, the matter came before the Board for consideration. Respondent was represented by Steven B. Perlmutter, MD, JD. After having considered all of Respondent's arguments, the Board denied Respondent's request for rehearing but granted Respondent's request for review for the limited purpose of reviewing whether the penalty imposed was excessive. *See* A.A.C. R4-16-103(D)(5). On October 1, 2014, the Board considered Respondent's request for review of whether the penalty imposed was excessive. Respondent was represented by Steven B. Perlmutter, MD, JD. After due consideration of the matter, the Board determined that Respondent failed to demonstrate that the penalty imposed was excessive and voted to deny the review and affirm the Order.

ORDER

Respondent's Request for Review is DENIED and the Order is AFFIRMED. The Board's Order dated April 21, 2014, is now effective.

RIGHT TO APPEAL TO SUPERIOR COURT

Respondent is hereby notified that his Order is the final administrative decision of the Board and that Respondent has exhausted his administrative remedies. Respondent

is advised that an appeal to superior court in Maricopa County may be taken from this decision pursuant to Title 12, Chapter 7, article 6, within thirty-five (35) days from the date this decision is served.

DATED AND EFFECTIVE this 10th day of October, 2014.

ARIZONA MEDICAL BOARD

By Patricia E. McSorley

Patricia E. McSorley
Interim Acting Executive Director

EXECUTED COPY of the foregoing mailed this 10th day of October, 2014 to:

Steven B. Perlmutter, MD, JD
PERMUTTER MEDICAL LAW, LLC
8655 East Via de Ventura, Suite G-200
Scottsdale, Arizona 85258
Attorney for Respondent

ORIGINAL of the foregoing filed this 10th day of October, 2014 with:

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

Mary Bailey
Arizona Medical Board Staff

DOC#4177779