BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **NEIL TRACHTENBERG, M.D.** Holder of License No. **10078** For the Practice of Allopathic Medicine In the State of Arizona.	Board Case No. MD-06-0927A **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** (Letter of Reprimand)

The Arizona Medical Board ("Board") considered this matter at its public meeting on August 8, 2007. Neil Trachtenberg, M.D., ("Respondent") appeared before the Board with legal counsel Gordon Lewis, for a formal interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue the following 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 No. 10078 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-06-0927A after receiving a complaint regarding Respondent's care and treatment of a fifty-six year-old female patient ("PC"). PC was experiencing post-menopausal bleeding and sought care with Respondent on November 21, 2005. Respondent conducted an evaluation and ordered an ultrasound that revealed fibroids with a normal endometrial lining. A December 13, 2005 hysterosalpingogram revealed an endometrial polyp.

4. On January 4, 2006 Respondent discussed options with PC, including a D&C, hysteroscopy and endometrial ablation. PC signed a consent form that day for all three procedures. On January 6, 2006 PC called Respondent's office and told his staff she wanted only

the D&C. The ablation was crossed out on the consent, but there is no date noted of the change. Respondent's staff noted in PC's chart that she only wanted the D&C and that this was "[o]kay by Dr. T." The operative permit forwarded by Respondent's office to the surgicenter did not list the ablation.

5. On January 20, 2006 Respondent had a general preoperative discussion with PC, but did not mention the ablation. During the surgery, the nurses informed Respondent the ablation was not on the operative permit and, therefore, there was no permission for it to be performed. Respondent claimed to have reviewed his notes and felt the ablation was an extension of the D&C and beneficial to PC. Therefore, even with the nurses objected, Respondent proceeded with the ablation. Post-operatively PC stated she had not wanted the ablation done.

6. Respondent now diligently reviews every consent form before he goes into the operating room. Respondent has practiced for over thirty years with no Board action. Respondent is a knowledgeable and caring physician who believed he was doing the right thing by performing the ablation. However, he performed a procedure to which PC had not consented. Respondent was forthright with the Board and demonstrated his knowledge and that he is current with the current American College of Obstetrics and Gynecology guidelines.

7. The standard of care requires a physician to perform the procedure to which the patient consented.

8. Respondent deviated from the standard of care by performing an ablation procedure without PC's consent.

9. PC underwent a procedure that she did not consent to or want.

CONCLUSIONS OF LAW

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

2. The Board has received substantial evidence supporting the Findings of Fact described above and said findings constitute unprofessional conduct or other grounds for the Board to take disciplinary action.

3. The conduct and circumstances described above constitutes 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 of the public.").

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

Respondent is issued a Letter of Reprimand for performing a procedure to which the patient did not consent.

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 this 15th day of October 2007.

THE ARIZONA MEDICAL BOARD

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

ORIGINAL of the foregoing filed this 15th day of October, 2007 with:

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

Executed copy of the foregoing mailed by U.S. Mail this 15th day of October, 2007, to:

Gordon Lewis
Jones, Skelton & Hochuli, PC
2901 North Central Avenue – Suite 800
Phoenix, Arizona 85012

Neil Trachtenberg, M.D.
Address of Record

Chris Bamp