BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **HILARIO JUAREZ, M.D.** Holder of License No. **12148** For the Practice of Allopathic Medicine In the State of Arizona.	Board Case No. MD-07-0161A **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** (Letter of Reprimand and Probation)

The Arizona Medical Board ("Board") considered this matter at its public meeting on February 6, 2008. Hilario Juarez, M.D., ("Respondent") appeared before the Board with legal counsel Cristina M. Chait 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. 12148 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-07-0161A after receiving a complaint from a managed care organization that Respondent had been terminated from the network's membership due to perceived inadequacies. The complaint referenced three patient care cases which were subsequently reviewed by the Board's Outside Medical Consultant who noted a deviation from the standard of care in one of the three cases, the case involving patient JJ.

4. JJ was a fifty-four year old female patient who first consulted with Respondent regarding weight reduction, gastric bypass surgery on September 30, 2002. JJ underwent testing and was evaluated for the surgery although the surgery did not occur until nine months later due

to delays in obtaining approval from the insurance company. At the time of the evaluation in September, 2002, JJ had a hemoglobin of 11.9 and hematocrit of 37.

5. JJ underwent an open gastric bypass surgery on June 30, 2003. Prior to the surgery, laboratory tests were performed which showed an abnormally low hemoglobin of 10.4 and hematocrit of 31.7, indicating anemia. Respondent testified that he was aware of the lower hemoglobin and hematocrit the night before the surgery. Respondent did not determine the cause of the lower hemoglobin and hematocrit prior to surgery. Respondent acknowledged that the history and physical that he performed just prior to the surgery was not adequate. On the hospital record of the history and physical, Respondent marked that the genitalia was normal when, in fact, he did not examine the genitalia. Respondent acknowledged that had he examined the genitalia, he may have discovered that JJ was having vaginal bleeding, a fact that she failed to report to Respondent. The day after the surgery, JJ experienced heavy vaginal bleeding which necessitated a blood transfusion.

6. Respondent acknowledged that he failed to document in JJ's medical record that he recognized the low hemoglobin and hematocrit, discussed it with the patient or addressed that issue. Respondent also acknowledged that the hospital record he dictated was inaccurate in describing JJ's surgery as laparascopic when, in fact, it was an open gastric bypass. Respondent believes that the error occurred because he dictated the report the day after the surgery. Respondent testified that, currently, he dictates the operative report the same day of the surgery.

7. The standard of care requires a recent and thorough history and physical prior to gastric bypass surgery.

8. Respondent deviated from the standard of care by failing to perform a recent and thorough preoperative history and physical.

9. An inaccurate history and physical and inaccurate operative report could contribute to misinformation in treating the patient if an emergency arose.

10. A physician is required to maintain adequate medical records. An adequate medical record means a legible record containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment. A.R.S. § 32-1401(2). Respondent's records were inadequate in that he failed to document an adequate history and physical including the awareness of the preoperative hemoglobin and hematocrit which were decreased and in the anemic range. Additionally, Respondent's operative report was inaccurate and stated that JJ's surgery was laparascopic when, in fact, it was an open gastric bypass.

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

ORDER

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

IT IS HEREBY ORDERED:

1. Respondent is issued a Letter of Reprimand for failure to perform a timely and adequate history and physical, inadequate documentation of an operative procedure and inaccurate documentation of a physical examination.

2. Respondent is placed on probation with the following terms and conditions:

a. Respondent shall obtain 17 hours Board Staff pre-approved Category I Continuing Medical Education ("CME") in medical record-keeping and documentation to be completed within six months. The probation will terminate when Respondent supplies proof of course completion satisfactory to Board Staff.

3. Respondent shall obey all federal, state, and local laws and all rules governing the practice of medicine in Arizona.

4. In the event Respondent should leave Arizona to reside or practice outside the State or for any reason should Respondent stop practicing medicine in Arizona, Respondent shall notify the Executive Director in writing within ten days of departure and return or the dates of non-practice within Arizona. Non-practice is defined as any period of time exceeding thirty days during which Respondent is not engaging in the practice of medicine. Periods of temporary or permanent residence or practice outside Arizona or of non-practice 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 this 3rd day of April, 2008.

ARIZONA MEDICAL BOARD 1913 STATE OF ARIZONA

THE ARIZONA MEDICAL BOARD

By _____
LISA S. WYNN
Executive Director

ORIGINAL of the foregoing filed this 3rd day of April, 2008 with:

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

Executed copy of the foregoing mailed by U.S. Certified Mail this 3rd day of April, 2008, to:

Cristina M. Chait, Esq.
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Hilario Juarez, M.D.
Address of Record

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