ARIZONA MEDICAL BOARD

In the Matter of **JOHN M. RITLAND, M.D.** Holder of License No. 17268 For the Practice of Allopathic Medicine In the State of Arizona.	**No. 03A-17268-MDX** **Case No. 03-0859** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR REVOCATION, STAYED, AND PROBATION.**

On February 12 and 13, 2004 this case came before the Arizona Medical Board ("Board") for oral argument and consideration of the Recommended Decision of the Administrative Law Judge ("ALJ") containing proposed findings of fact, conclusions of law and a recommended order. John M. Ritland, M.D. ("Respondent") appeared and was represented by Robert Milligan. Assistant Attorney General Dean Brekke represented the State. Assistant Attorney General Christine Cassetta advised the Board. The Board considered the ALJ's recommendation and the entire administrative record in the case and issued Findings of Fact, Conclusions of Law and Order ("2004 Order").

Respondent filed for Judicial Review of the 2004 Order. The Superior Court upheld the Board's decision. Respondent appealed to the Arizona Court of Appeals. The Court of Appeals vacated the Board's decision and remanded the matter to the Board for the Board to establish on the record whether it understands it can reject a credibility determination and to consider the record in light of this understanding.

On October 12, 2006 the Board heard oral argument and considered the Recommended Decision of the ALJ in light of the Court of Appeal's remand. John M. Ritland, M.D. ("Respondent") appeared and was represented by Robert Milligan. Assistant Attorney General Dean Brekke represented the State. Assistant Attorney General Christine Cassetta advised the Board. Having considered the ALJ's recommendation, the entire administrative record in this case, and the Court of Appeals opinions, the Board hereby issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Arizona Medical Board ("Board") is the duly constituted authority for licensing and regulating the practice of allopathic medicine in the State of Arizona.

2. Respondent, John M. Ritland, M.D., is the holder of License No. 17268 for the practice of allopathic medicine in the State of Arizona.

3. On September 24, 2003 the Board summarily restricted Respondent's practice based on allegations of sexual conduct with minor girls, a sexual relationship with a patient, inappropriate prescribing practices, and inadequate patient records.

4. After the Board's summary restriction of Respondent's practice, he timely filed a request for an administrative hearing.

5. Respondent is an obstetrician/gynecologist who has practiced in Flagstaff, Arizona since 1987.

6. Respondent graduated from Andrews University in 1977, with honors, with a Bachelor of Science degree in biology.

7. Respondent earned his Medical Degree from Loma Linda School of Medicine in 1981.

8. In 1985, Respondent completed his residency training in Obstetrics and Gynecology at the University of Illinois/MacNeal Hospital in Chicago, Illinois.

9. After completing his residency, Respondent entered private practice in Livingston, Tennessee.

10. Respondent has been board certified by the American Board of Obstetrics and Gynecology since 1987 and is a Fellow of the American College of Obstetrics and Gynecology.

11. Respondent has held privileges at the Flagstaff Medical Center in Flagstaff, Arizona since 1987.

12. The Board initiated the instant case on August 28, 2003 upon the allegation of CB, the mother of LB and RB, alleging improper sexual conduct between Respondent and LB and RB, while the latter two were minors.

13. In addition, LB and RB alleged that Respondent had provided them each with birth control pills, weight control medication, acne medication and medication for depression.

14. Complainant sisters LB and RB were friends of Respondent's daughter, had known Respondent for several years, and were frequent guests in Respondent's home.

15. The two families became acquainted in 1987 through their mutual affiliation with the Flagstaff Seventh Day Adventist Church.

LB

16. LB was seventeen years old at the time the following events occurred.

17. LB stated that Respondent had made inappropriate comments about her breasts that they "sat very well in a shirt."

18. On December 26, 2000 LB accompanied Respondent to a coffee shop in Flagstaff after spending the night at Respondent's home. After returning to Respondent's house, the two sat in Respondent's vehicle in the garage talking.

19. LB was talking about not having had a boyfriend when Respondent stated "a guy is going to want to touch you" and reached out toward LB's breast. LB raised her arm to block him.

20. Respondent told LB that she was wrong trying to block a boy's advance and later reached back and placed his hand on her breast.

21. A few weeks later, LB was in Respondent's home office, seated on his desk and talking about boys again. LB stated she was nervous about kissing and Respondent stated it was not big deal. He then bent over to her and kissed her on the lips.

22. LB stated that Respondent, during conversations regarding sexuality issues, never counseled her regarding abstinence or self-respect.

23. LB stated she was talking to Respondent because he was a mature doctor and a friend of the family. She felt he was someone she could trust.

24. On December 26, 2000 Respondent provided LB with a prescriptive medication, Prozac.

25. LB had been feeling depressed and had told Respondent's daughter, who apparently relayed the information to Respondent. Respondent drove LB to his medical office and provided her with the Prozac.

26. Respondent did not conduct any physical examination of LB prior to providing her with the Prozac.

27. Respondent stated that LB was "suicidal."

28. The standard of care for a gynecologist/obstetrician diagnosing depression requires that at least five of nine symptoms be found through an extensive evaluation and interview prior to providing medication and requires psychiatric intervention to prevent suicide.

29. Respondent did not open a patient chart detailing a history and physical examination prior to providing LB with Prozac.

30. During early 2001, Respondent asked LB to begin taking birth control medication. He told LB that he wanted her to take it to make it easier to convince her sister, RB, to go on birth control. Respondent also told LB that it would help her acne.

31. Because of the lack of medical documentation by Respondent, it is unclear whether LB had acne, or if she did to what extent she had acne.

32. Respondent provided LB about six months of birth control medication

33. At the time he provided LB with the birth control medication he asked her whether she had regular menstrual cycles. He did not perform a physical examination of her.

34. The standard of care for a gynecologist/obstetrician prescribing birth control to adolescent females requires that a physician obtain and record a detailed patient and family history and perform a minimum physical examination consisting of recording blood pressure, weight, allergies and a urinalysis. Also, a patient needs to be informed of the risks and benefits of taking the medication.

35. Potential risks to LB include the lack of documentation of blood pressure, family history, history of lipids or cholesterol, and developing thromboemboli.

36. Notwithstanding the fact that LB had a primary care physician, it is found that a patient/doctor relationship existed between LB and Respondent when he treated her as described above.

37. Respondent has denied that he inappropriately touched LB.

RB

38. From approximately 1997 through June 2001, RB and Respondent's daughter, KR, were best friends and virtually inseparable, despite the fact that RB was three years older than KR.

39. RB was a role model for KR. KR would attempt to emulate KR's behaviors, dress, and attitudes, among other things.

40. From 2000 through June 2001, RB and KR spent almost every weekend at one or the other's homes. The weekends were divided equally between Respondent's home and RB's home.

41. Beginning when RB was about 14 years old, Respondent began making comments about how well RB was "developing" and how attractive she would be to boys.

42. Respondent would occasionally go down to the game room on the lower level of his house and would watch television with RB and KR. Early in 2001, Respondent put his arm around RB and attempted to touch her breast.

43. On a later occasion, RB awoke early in the morning at Respondent's home with Respondent attempting to unfasten her pants. Respondent hushed her, stopped what he was doing and left.

44. On another occasion Respondent came into one of the bathrooms in his house while RB was wrapped only in a towel and drying her hair. Respondent stated to her that he had heard that RB had a lump on her breast and wanted to examine it. Even after RB objected, Respondent insisted and placed his hands under the towel and felt first one breast then the other. Respondent's wife, a family physician, was present in the house at the time. However, there is no credible evidence that she had any knowledge of Respondent's actions.

45. Respondent showed RB a video on his computer that portrayed a man and woman engaged in sex in a ball park.

46. Respondent admits that he had such a video on his computer.

47. In or about January, 2001, Respondent provided RB with birth control medications. RB had not requested the medication. Respondent suggested that she take it for her acne and to regulate her periods.

48. RB denies having had acne or any problems with her menstrual periods.

49. Respondent did not provide any physical examination for RB prior to prescribing her birth control medication nor did he open a patient chart for her.

50. The standard of care for a gynecologist/obstetrician prescribing birth control medication to adolescent females requires that a physician obtain and record a detailed patient and family history and perform a minimum physical examination consisting of recording blood pressure, weight, allergies and a urinalysis. Also, a patient needs to be informed of the risks and benefits of taking the medication.

51. Potential risks to RB include lack of documentation of blood pressure, family history, history of lipids or cholesterol, and developing thromboemboli.

52. Notwithstanding the fact that RB had a primary care physician, it is found that patient/doctor relationship existed between RB and Respondent when he treated her as described above.

53. Respondent has denied that he ever inappropriately touched RB.

C

54. Respondent admits that he had an intimate, extra-marital affair with C[1], a married woman, which lasted from approximately January, 1988 until sometime in 1993.

55. Respondent admits that he was in a physician/patient relationship with C while she was pregnant after the affair had started.

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[1] At the hearing it was determined that C's identity could easily be deduced from too much description of her. Therefore, the reference to her is kept to the minimum in this decision.

56. Respondent admits that he delivered C's second child, unassisted, at his office and that this was the only child that he has ever delivered in his office.

57. The standard of care for a reasonable and prudent physician intimately involved with a patient requires the physician to either end the intimate relationship or to provide an alternate physician to give medical care.

DR. GRAY'S PSYCHOLOGICAL EVALUATION AND TREATMENT PLAN

58. Steven R. Gray, Ed.D. was retained by the Board to conduct a psycho-sexual evaluation on Respondent. Dr. Gray is a licensed psychologist who specializes in the assessment and treatment of sexual abusers and victims of sexual assault.

59. Dr. Gray's evaluation determined sexual boundary issues and made the following recommendations as to the appropriate monitoring for preventing the occurrence of such issues:

- "Dr. Ritland should participate in a program where he receives supervision feedback regarding his practice technique on a random basis for at least one year. These feedback devices be forwarded to the Board of Medical Examiners (sic). Feedback devices should be provided by two distinct entities: a) patients (i.e. "how are we doing? type of device) and b) staff members associated with his practice, i.e. nurses, nurse practitioners, physicians and physician assistants."
- "Dr. Ritland should be precluded from engaging in sexuality counseling with patients. Based on at least two patient reports, it is clear he has been unable to consistently judge patient responses to his sexuality counseling or advice."
- "Completion of at least thirty hours of CME relative to boundary issues."

- "Completion of a polygraph examination on a six month basis for two years and then annually for an extended period of time (to be determined). The polygraph examiner shall be selected by the Board of Medical Examiners (sic)."
- "Participation in counseling to further assess his motivation regarding sexual comments which were unsettling to at least two patients. He should read and complete the responses to the book entitled Streetwise: Practical Risk Management for Practicing Physicians, by Rosemary Gafner, Medical Risk Management, October 1992.

60. Dr. Gray's recommendations are found to be appropriate in light of the evidence of record.

61. Prior to the commencement of the instant matter, Respondent had been the subject of only two prior complaints lodged with either the Board or its predecessor, the Arizona Board of Medical Examiners.

62. One of those complaints resulted in the issuance of a non-disciplinary advisory letter for giving unwanted and unsolicited sexual advice and using non-medical sexual terminology with a patient. The record supports the finding that Respondent has continued to give unwanted and unsolicited sexual advice and has used non-medical sexual terminology since the issuance of the advisory letter.

63. The second complaint against Respondent was investigated and dismissed as being without merit.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter of this disciplinary action and over the Respondent. A.R.S. § 32-1401 et seq.

2. The Board's "primary duty is to protect the public from unlawful, incompetent, unqualified or unprofessional practitioners of allopathic medicine." A. R.S. § 32-1403.

3. The Board has the burden of proving the allegations of unprofessional conduct by Respondent. A.A.C. R2-19-119(B).

4. The burden of proof in this administrative action is a preponderance of the evidence. A.A.C. R2-19-119(A).

5. A trier of fact may rely upon the demeanor of witnesses when giving weight to the credibility of witnesses. Based upon the Administrative Law Judge's observation of Respondent, RB and LB during the hearing and during their respective testimony, the Administrative Law Judge concludes that RB and LB were credible.

6. The Board understood in 2004 when it first considered the ALJ's Recommended Order and understands now that it may reject an ALJ's credibility determination. The Board declines to reject the ALJ's credibility determination.

7. "A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person fifteen or more years of age without the consent of such person." A.R.S. § 13-1404. Sexual abuse is a class 5 felony.

8. A.R.S. § 13-1401(2) defines sexual contact as "any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breasts by any part of the body or by any object or causing a person to engage in such contact."

9. The conduct and circumstances described in the above Findings of Fact constitutes unprofessional conduct by Respondent pursuant to A.R.S. § 32-1401(27)[2](d) (Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission).

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[2] All references to A.R.S. § 32-1401(26) were updated to reflect the current statutory citation of A.R.S. § 32-1401(27).

10. The conduct and circumstances described in the above Findings of Fact does constitute unprofessional conduct by Respondent pursuant to A.R.S. § 32-1401(27)(q) (Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public).

11. Pursuant to the provisions of A.R.S. § 32-1401(2), an adequate medical record is a "legible medical record" that contains "at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate the advice and cautionary warnings provided to the patient, and provide sufficient information for another practitioner to assume the continuity of the patient's care at any point in the course of treatment."

12. The conduct and circumstances described in the above Findings of Fact does constitute unprofessional conduct by Respondent pursuant to A.R.S. § 32-1401(27)(e) (Failing or refusing to maintain adequate records on a patient).

13. The conduct and circumstances described in the above Findings of Fact does constitute unprofessional conduct by Respondent pursuant to A.R.S. § 32-1401(27)(a) (Violating any federal or state laws or rules and regulations applicable to the practice of medicine).

14. With regard to the emergency action taken by the Board on September 24, 2003, the public health, safety and welfare did imperatively require emergency action pursuant to A.R.S. § 32-1451(D).

15. Respondent may be assessed the costs of the formal hearing in this matter. A.R.S. § 32-1451(M).

ORDER

In view of the foregoing, it is Ordered that Respondent's license to practice allopathic medicine in the State of Arizona, License No. 17268, is Revoked. However, Revocation is Stayed and Respondent is placed on probation for 10 years pursuant to the terms and conditions noted below. Upon any violation of a probationary term, after giving notice and an opportunity to be heard, the Board shall terminate the probation and revoke Respondent's license. If an investigation involving an alleged violation of probation

is initiated, but not resolved prior to the termination of the probation, the Board shall have continuing jurisdiction and the period of probation shall extend until the matter is final.

1. Respondent must have a female chaperone present in all settings when he is with a female patient under the age of eighteen years including, but not limited to office, hospital, or clinic. The female chaperone must be an allied healthcare provider (a medical assistant, registered nurse or licensed practical nurse) employed by Respondent, hospital or clinic and may not be a representative or relative who accompanied the patient. Respondent shall instruct the chaperone to document her presence by dating and then signing and legibly printing her name on each patient's chart at the time of the examination. Respondent shall instruct the chaperone to immediately report any inappropriate behavior to Respondent and the Board. Board Staff may perform random periodic reviews to ensure compliance with this requirement.

2. Respondent shall pay the costs of the administrative hearing. Board Staff will notify Respondent of the amount due. Respondent shall pay the costs within 60 days of receiving notification of the amount due.

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 to practice medicine outside the State or for any reason should Respondent stop practicing medicine in Arizona, Respondent shall notify the Board's Executive Director in writing within 10 days of departure and return or the dates of non-practice in Arizona. Non-practice is any period of time exceeding thirty days during which Respondent is not engaged in the practice of medicine. Periods of temporary or permanent residence of practice outside of Arizona or of non-practice within Arizona do not apply to the reduction of the probationary period.

5. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board stating whether he has been compliant with all conditions of probation. The declarations must be submitted on or before the 15th of March, June, September and December of each year.

6. Respondent may request modification of the terms of his probation after he has successfully completed five years of probation.

RIGHT TO PETITION FOR REHEARING OR REVIEW

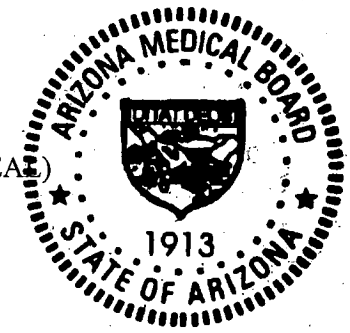
Respondent is hereby notified that he has the right to petition for a rehearing or review by filing a petition with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09. The petition must set forth legally sufficient reasons for granting a rehearing. A.A.C. R4-16-102. Service of this order is effective five (5) days after date of mailing. If a motion for rehearing 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 is required to preserve any rights of appeal to the Superior Court.

DATED this 16th day of October, 2006.

ARIZONA MEDICAL BOARD

(SEAL)



By: _____
Timothy C. Miller, J.D.
Executive Director

Original of the foregoing filed this 16th day of October, 2006 with:

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

Copy of the foregoing filed this 16th day of October, 2006 with:

Cliff J. Vanell, Director
Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007

Executed copy of the foregoing
mailed by US MAIL
this 16th day of October, 2006 to:

Robert Milligan
Gallagher & Kennedy PA
2575 East Camelback Road
Phoenix, Arizona 85016-9225

John M. Ritland, M.D.
Address of Record

Dean Brekke
Assistant Attorney General
Office of the Attorney General
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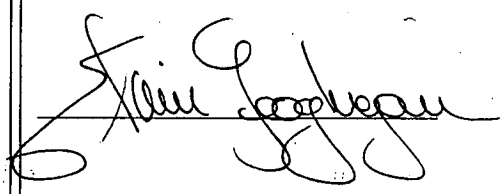
Phoenix, Arizona 85007



BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **JOHN M. RITLAND, M.D.** Holder of License No. **17268** For the Practice of Allopathic Medicine In the State of Arizona.	**Case No. MD-03-0859A** **ORDER DENYING REHEARING OR REVIEW**

At its public meeting on December 7, 2006 the Arizona Medical Board ("Board") considered a Petition for Rehearing or Review filed by John M. Ritland, M.D. ("Respondent"). Respondent requested the Board conduct a rehearing regarding its October 16, 2006 Findings of Fact, Conclusions of Law and Order for Revocation, Stayed and Probation. The Board voted to deny the Respondent's Petition for Rehearing or Review upon due consideration of the facts and law applicable to this matter.

ORDER

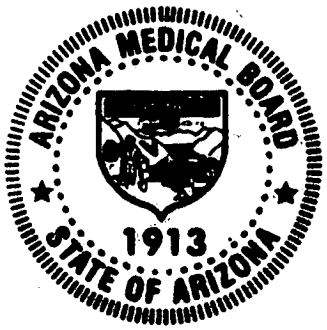
IT IS HEREBY ORDERED that:

Respondent's Petition for Rehearing or Review is denied. The Board's October 16, 2006 Findings of Fact, Conclusions of Law and Order for a Decree of Censure and Probation is effective and constitutes the Board's final administrative order.

RIGHT TO APPEAL TO SUPERIOR COURT

Respondent is hereby notified that he 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.

DATED this 12th day of December, 2006.



ARIZONA MEDICAL BOARD

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

ORIGINAL of the foregoing filed this 13th day of December, 2006 with:

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

Executed copy of the foregoing mailed by U.S. Mail this 13th day of December, 2006, to:

Robert J. Milligan
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John M. Ritland, M.D.
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_____