BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **ZEV FAINSILBER, M.D.** Holder of License No. 22634 For the Practice of Medicine In the State of Arizona.	Case No. MD-03-0014A **CONSENT AGREEMENT FOR LETTER OF REPRIMAND AND DISMISSAL OF JUDICIAL REVIEW ACTION**

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Zev Fainsilber, M.D. ("Respondent"), the parties agree to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges that he has the right to consult with legal counsel regarding this matter and has done so or chooses not to do so.

2. By entering into this Consent Agreement, Respondent agrees to immediately move to dismiss his appeal (No. LC2007-000035-001 DT), with prejudice, upon Board acceptance of this Consent Agreement. Respondent voluntarily relinquishes any rights to any additional hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board. Respondent further waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director. If approved, the instant Consent Agreement supersedes the previous Findings of Fact, Conclusions of Law and Order entered in this case on October 13, 2006.

4. The Board may adopt this Consent Agreement or any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

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, express or implied, of the Board's statutory authority or jurisdiction regarding any other pending or future investigation, action or proceeding. The acceptance of this Consent Agreement does not preclude any other agency, subdivision or officer of this State from instituting other civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

6. All admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by Respondent are not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or any other state or federal court.

7. Upon signing this agreement, and returning this document (or a copy thereof) to the Board's Executive Director, Respondent may not revoke the acceptance of the Consent Agreement. Respondent may not make any modifications to the document. Any modifications to this original document are ineffective and void unless mutually approved by the parties.

8. If the Board does not adopt this Consent Agreement, Respondent will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defense.

9. This Consent Agreement, once approved and signed, is a public record that will be publicly disseminated as a formal action of the Board and will be reported to the National Practitioner Data Bank and to the Arizona Medical Board's website.

10. If any part of the Consent Agreement is later declared void or otherwise unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force and effect.

11. Any violation of this Consent Agreement constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-1401(27)(r) ("[v]iolating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter") and 32-1451.

12. Both parties agree to pay their own attorneys' fees and costs.

ZEV FAINSILBER, M.D. Dated: 08/25/07

APPROVED AS TO FORM

DAVID EARL, ESQ. Dated: 08/27/07

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. 22634 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-03-0014A after receiving a complaint alleging that Respondent had inappropriately touched a forty-seven year-old female patient ("FB") during a 2002 office visit. FB alleged that after the inappropriate contact Respondent called her at work and asked to see her that evening.

4. Respondent admits to calling FB at work, but asserts he did so to follow-up with her immediately about the possibility of skin cancer after noting her history of melanoma, which was listed on an undated note Respondent wrote in FB's chart.

5. As a result of the allegations, the Board ordered Respondent to undergo a psychosexual evaluation. The results of the evaluation were inconclusive and the evaluator recommended that Respondent use a professional chaperone at all times when treating female patients both to protect himself from future allegations and possibly to protect his patients. The evaluator also recommended that Respondent attend therapy to address behaviors that generated FB's complaint.

6. Respondent admits he did not maintain adequate records for FB. Respondent did not document his phone call to FB. Also, Respondent's only notes about a possible melanoma for FB are on an undated form he calls his "cheat sheet," written in his handwriting. Respondent had made numerous undated entries to the "cheat sheet" in FB's chart, then crossed out medications or notations that were no longer current. Respondent was not taught this method of recordkeeping either in medical school or

residency. Respondent admits this form of record keeping is inadequate and he no longer uses it.

7. Respondent admits he fell below the standard of care after he suspected FB might have had a melanoma. The standard of care for treatment of a suspected melanoma required Respondent to refer FB to the appropriate specialist. Respondent did not refer FB for evaluation and treatment of suspected melanoma. Respondent thus deviated from the standard of care. This conduct was potentially harmful or dangerous to FB's health.

CONCLUSIONS OF LAW

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

9. 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.

10. The conduct and circumstances described above constitute 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 failing to appropriately refer a patient with suspected melanoma to a specialist and for failing to properly enter and maintain FB's records in accordance with the relevant medical standards.

2. Respondent is placed on probation for five years, beginning October 13, 2006, with the following terms and conditions:

a. All of Respondent's interactions with female patients must take place in the presence of a female licensed or certified healthcare provider chaperone ("chaperone") who has an unencumbered view of the patients. The chaperone must be employed by the Respondent, hospital or clinic and may not be a representative or relative who accompanies the patient. Respondent shall instruct the chaperone to document her presence by signing, dating 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 chart reviews to ensure compliance with this Order.

b. Respondent shall immediately obtain a treating therapist approved by Board Staff and remain in treatment with the therapist for boundary issues and psychosocial issues for a minimum of twenty-four months (beginning October 13, 2006). Respondent shall comply with the therapist's recommendations for continuing care and treatment. Respondent shall instruct the therapist to submit quarterly written reports to the Board regarding continued care and treatment. The reports must be submitted on or before the 15th day of March, June, September and December of each year. Respondent shall provide the therapist with a copy of this Order. Respondent shall pay the expenses of therapy and shall pay for the preparation of the quarterly reports. After twenty-four months, Respondent may submit a written request that the Board terminate the requirement that Respondent remain in treatment with the therapist. The Board's decision to terminate will be based, in part, upon the treating therapist's recommendation for continued care and

treatment. The Board may require any additional testing or evaluation necessary for it to determine whether to terminate the therapy requirement.

c. Within six months of October 13, 2006, Respondent shall obtain 15 hours of Board Staff pre-approved Category I Continuing Medical Education ("CME") in medical record keeping. Respondent shall provide Board Staff with satisfactory proof of attendance. The CME hours shall be in addition to the hours required for biennial renewal of medical license.

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

e. 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 unless Board Staff approves.

DATED this 17th of October, 2007.

THE ARIZONA MEDICAL BOARD

(SEAL)

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

ORIGINAL of the foregoing filed
this 17th day of October, 2007 with:

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

EXECUTED COPY of the foregoing mailed
this 17th day of October, 2007 to:

David Earl
Jennings, Strouss, & Salmon, P.L.C.
The Collier Center 11th Floor
201 E Washington St
Phoenix AZ 85004-2428

Emma Mamaluy
Assistant Attorney General
1275 West Washington
Phoenix, Arizona 85007
Attorneys for the Board

Zev Fainsilber, M.D.
Address of Record