BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of: **NATHAN D. GOLDENTHAL, M.D.** Holder of License No. **9600** For the Practice Medicine In the State of Arizona,	**Case No. MD-01-0495** **MD-01-0720** **MD-01-0750** **CONSENT AGREEMENT AND ORDER FOR PRACTICE RESTRICTION**

CONSENT AGREEMENT

RECITALS

In the interest of a prompt and judicious settlement of the above-captioned matter before the Arizona Medical Board (Board) and consistent with the public interest, statutory requirements and responsibilities of the Board and under A.R.S. § 41-1092.07(F)(5), Nathan D. Goldenthal, M.D. (Respondent), holder of license number 9600 to practice allopathic medicine in thee State of Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as the final disposition of this matter.

1. Respondent has read and understands this Consent Agreement as set forth herein, and has had the opportunity to discuss this Consent Agreement with an attorney or has waived the opportunity to discuss this Consent Agreement with an attorney. Respondent voluntarily enters into this Consent Agreement for the purpose of avoiding the expense and uncertainty of an administrative hearing.

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2. Respondent understands that he has a right to a public administrative hearing concerning each and every allegation set forth in the above-captioned matter, at which administrative hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all right to such an administrative hearing, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning the matters set forth herein. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

3. Respondent agrees that the Board may adopt this Consent Agreement or any part of this agreement, under A.R.S. § 32-1451(G)(5). Respondent understands that this Consent Agreement or any part of the agreement may be considered in any future disciplinary action against him.

4. Respondent understands that 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. Respondent also understands that 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.

5. All admissions made by Respondent in this Consent Agreement are made solely for the final disposition of this matter, and any related administrative proceedings or civil litigation involving the board and Respondent. This Consent Agreement is not to be used for any other regulatory agency proceedings, or civil or criminal proceedings, whether in the State of Arizona or any other state or federal court, except related to the enforcement of the Consent Agreement itself.

6. Respondent acknowledges and agrees that, upon signing this Consent Agreement and returning this document to the Board's Executive Director, Respondent may not revoke his acceptance of the Consent Agreement or make any modifications to the document, regardless of whether the Consent Agreement has been issued by the Executive Director. Any modification to this original document is ineffective and void unless mutually approved by the parties in writing.

7. Respondent understands that the foregoing Consent Agreement shall not become effective unless and until adopted by the Board and signed by its Executive Director.

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

9. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board.

10. Respondent understands that any violation of this Consent Agreement constitutes unprofessional conduct pursuant to A.R.S. § 32-1401(25)(r)([v]iolating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under the provisions of this chapter) and may result in disciplinary action pursuant to A.R.S. § 32-1451.

ACCEPTED BY:

DATED: 11/29/04

Nathan D. Goldenthal, M.D.

REVIEWED AND APPROVED AS TO FORM BY:

Counsel for Respondent

FINDINGS OF FACT

By stipulation of the parties, the following Findings of Fact, Conclusions of Law and Consent Order are entered for final disposition of the matters described therein. Respondent acknowledges that sufficient evidence exists for the Board to make the following 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. 9600 for the practice of allopathic

medicine in the State of Arizona.

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3. On June 21, 2000, the Board found Respondent guilty of unprofessional conduct, issued a Letter of Reprimand, a civil penalty and placed him on probation. A term of the probation required Board staff to conduct an office survey and billing review of Respondent's practice.

4. On January 23, 2001, Board staff went to Respondent's office and randomly selected eleven (11) patient files for review.

5. On March 21, 2001, Board medical consultant, Maxwell MacCollum, M.D. filed his report on his review of the patient files. Dr. MacCollum found concerns over Respondent's use of CPT coding. Among his concerns were excessive billings for comprehensive history, comprehensive examination and medical decision-making of high complexity when none were performed and inadequate medical records to support the diagnoses made.

6. Respondent states that the billings were for independent medical examinations where fees were agreed upon by attorneys representing the patients. However, the fillings were submitted to third parties rather than to the attorneys and raise questions over the appropriateness of the billings.

7. Respondents patient files were referred to a physician in occupational medicine for review. This reviewer had similar concerns over the billing practice and also

raised concerns over Respondent's treatments utilizing Vitamin B12 injections, antiviral therapy such as Famvir, and administration of intramuscular gamma globulin for conditions such as exposure to molds. This reviewer was also critical of the use of pulse oximetry on virtually every patient whether or not the patient had problems related to the pulmonary system.

8. Respondent admits that the above described conduct, if proven at hearing, violates the provisions of the Arizona Medical Practices Act and constitutes professional misconduct as set forth in that Act.

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9. On October 11, 2001, the Board received a letter of complaint alleging that Respondent had submitted billings to an insurance carrier for services he had not provided or rendered to the patient BB.

10. Respondent first saw BB on June 5, 2001, after she had been involved in a motor vehicle accident. Respondent dictated a two page history and physical. He indicated that he had reviewed the cerebral and spinal CT scans and interpreted both as "normal" and also reviewed cervical x-rays. He prescribed Relafen and an ankle wrap for an ankle strain.

11. Respondent saw BB several more times, on June 8, 2001, June 12 and June 29, at which visit flexion/extension x-rays of the cervical spine were ordered and on July 10 and 17, 2001.

12. Respondent submitted billings to BB's insurance carrier.

13. On the June 5th visit, Respondent coded 72131 for an interpretation of a computerized axial tomography (CT) of the lumbar spine without contrast material. There was no CT of the lumbar spine. A written report is considered an integral part of a radiological procedure interpretation. Respondent did not prepare a written report, but merely noted "normal." On the same visit, Respondent coded 70552 for interpretation of magnetic resonance imaging (MRI) of the brain with contrast materials. There was no MRI of the brain. Again, a written report is considered an integral part of a radiological procedure interpretation. Respondent did not prepare a written report, but merely noted "normal." (BB had received a CT of the brain, without contrast and a CT of the spine from the mid cervical to the mid thoracic spine, without contrast, and it is probably these that Respondent looked at.)

14. On the June 8th and 29th and July 10th visits, Respondent coded 20550 for injections of a tendon, sheath, ligament, trigger points or ganglion cyst. Respondent's records for those dates show "trigger point therapy" but do not list any injection given nor the locations of any injections. In his response to the Board, Respondent indicated that no medication was injected and that he was utilizing a "dry trigger point technique."

15. On the June 12th visit, Respondent coded the office visit as 99215, which requires

a comprehensive history; a comprehensive examination and medical decision-making of high complexity. The dictated report is brief, records a blood pressure, and possibly the physical examination of the neck indicating no restriction. The history is very brief and the plan was to stay on the Relafen until finished and to wear the ankle wrap.

16. Respondent stated in his response to the Board that the June 12th visit was a conference with BB and her attorney. Such conferences are appropriately billed to the attorney and not the insurance carrier.

17. Respondent violated the standard of care by billing for services not rendered and failing to maintain accurate records on a patient.

18. Respondent admits that the above described conduct, if proven at hearing, violates the provisions of the Arizona Medical Practices Act and constitutes professional misconduct as set forth in that Act.

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19. On October 22, 2001, the Board opened an investigation concerning the care and treatment rendered to patient SC ("Patient") by Respondent. The complaint arose out of an investigation of another physician and alleged that Respondent had failed to properly treat Patient's low back pain.

20. Patient was initially examined by Respondent on July 30, 1998 regarding his complaint of low back pain following a lumbar diskectomy on the right at the L5-

S1 level approximately three months prior.

21. Respondent's records indicate that, following an examination of the patient, he opined that the patient was not permanent and stationary, and recommended lighter duty and that the patient wear a back brace.

22. Patient returned to visit Respondent on May 3, 1999, November 5, 1999, November 22, 1999 and December 30, 1999, when Respondent administered nerve block procedures on the right at L4-5 and at L5-S1.

23. On the first two occasions, Respondent's dictation read that the "nerves for the right L4-5 roots were located , an anesthetic ethyl chloride used topically followed by .50% Marcaine without epinephrine was injected lateral to the facet region using 2.5 21 g syringe on the right side. Methylprednisolone 80 mg was injected along the line of the approach of the needles. Needles were withdrawn and pressure bandages applied. The procedure was again repeated at the L5-S1 level with independent insertion and administration. Patient tolerated procedure well with some relief of pain."

24. On the last two occasions, Respondent's dictation was the same except that Depo-Medol 4 mg was injected. (Depo-Medol is methylprenisolone.)

25. Respondent claims that he types his own dictation and made typographical errors. When he first indicated "80 mg" injections, he meant that he had made 40 mg injections at each of the two levels. When he later recorded "4 mg" injections, he

meant "40" mg injections.

26. The reviewer raised concerns over the procedures used by Respondent to perform "nerve root blocks." A "nerve block" requires the use of technical aids such as biplane fluoroscopy, contrast material and a nerve stimulator to enhance the accuracy of the needle placement at the appropriate nerve.

27. Respondent did not utilize commonly used techniques to localize the injections and administer a nerve block; and, either used an improper dosage of methylprednisolone during the procedure or failed to maintain accurate records on a patient.

28. Respondent admits that the above described conduct, if proven at hearing, violates the provisions of the Arizona Medical Practices Act and constitutes professional misconduct as set forth in that Act.

MITIGATION

29. Respondent provided substantial literature in support of his medical procedures in his response to the Board investigation. Additionally, Respondent has informed the Board staff that he no longer maintains a clinical practice, has limited himself to performing as an expert witness in medi-legal proceedings and reviewing cases for governmental entities. He has not renewed his Arizona allopathic license and plans to retire for health reasons. He also allowed his DEA license to expire and does no prescribing for patients.

CONCLUSIONS OF LAW

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

2. The conduct and circumstances described above in paragraphs 3 through 28 constitute unprofessional conduct pursuant to *A.R.S. § 32-1401(25)(e)* "Failing or refusing to maintain adequate records on a patient."

3. The conduct and circumstances described above in Paragraph 3 through 18 constitute unprofessional conduct pursuant to *A.R.S. § 32-1401(25)(u)* "Charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement which has the same effect."

CONSENT ORDER

IT IS THEREFORE ORDERED that:

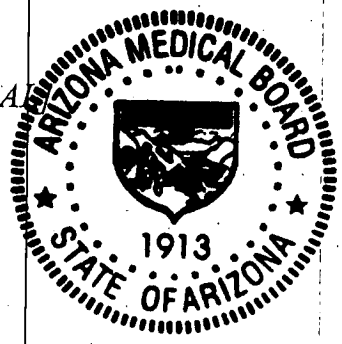
1. Respondent Nathan D. Goldenthal, M.D., License No. 9600, shall not practice clinical medicine or any medicine involving direct patient care, and is prohibited from prescribing any form of treatment including prescription medications, until respondent meets with the Board and affirmatively receives the Board's approval to return to practice. The Board may require any combination of staff approved physical examination, psychiatric and/or psychological evaluations, or successful passage of the Special Purpose Licensing Examination or other competency examination/evaluation or interview it finds necessary to assist it in determining Respondent's ability to safely and

competently to return to the active practice of medicine.

DATED AND EFFECTIVE this 12th day of January, 2005.

ARIZONA MEDICAL BOARD

[SEAL]



Timothy C. Miller, J.D.
Executive Director

Original of the foregoing filed this 13 day of January, 2005, with:

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

Executed Copy of the foregoing mailed mailed by U.S. Certified Mail, this 13 day of January, 2005, to:

Nathan Goldenthal, M.D., M.PH
17233 North 60th Place
Scottsdale, AZ 85254
Respondent

COPIES of the foregoing mailed this 13 day of January, 2005, to:

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