BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

DUANE C. WHITAKER, M.D.

Case No. MD-16-0020A

Holder of License No. 12532
For the Practice of Allopathic Medicine
In the State of Arizona.

ORDER FOR LETTER
OF REPRIMAND; AND
CONSENT TO THE SAME

Duane C. Whitaker, M.D. ("Respondent") elects to permanently waive any right to a hearing and appeal with respect to this Order for a Letter of Reprimand; admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of this Order by the Board.

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 number 12532 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-16-0020A after receiving a complaint alleging failure to adequately conduct Mohs surgery.

4. During the course of the Board's investigation, a Medical Consultant ("MC") reviewed patient charts for Mohs surgery on AZ (11/26/12) (Basal Cell Carcinoma ("BCC") of the left ear), RM (10/7/13) (Squamous Cell Carcinoma ("SCC") of the left ear and preauricular face), and MR (10/20/10) (BCC of the right ear), including the Mohs histology slides prepared for each patient during the course of Respondent's treatment.

5. The MC concluded in each case that Respondent's removal of either the BCC or SCC was incomplete, noting that there is insufficient tissue present on the histology slides to represent a complete margin of a 2 cm tumor of the ear. Respondent's Medical Consultants disagreed.
6. The MC also noted that in the case of RM, there is poor correlation with Mohs Map, Operative Report, and the findings in the histology slides, and that there is no documentation discussing adjuvant therapies, further staging work up, or the persistent tumor with the patient at the time of Mohs surgery.

7. The standard of care for performing Mohs surgery required Respondent to obtain adequate samples and completely remove the tumors. Respondent deviated from this standard of care for all three patients by failing to obtain adequate samples and by failing to completely remove tumors.

8. Actual patient harm was identified in that AC, MR and RM had documented recurrences of their skin cancers that required additional Mohs surgery and in some cases tissue loss, nerve damage and reconstruction.

**CONCLUSIONS OF LAW**

a. The Board possesses jurisdiction over the subject matter hereof and over Respondent.

b. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-140127(e) ("Failing or refusing to maintain adequate records on a patient.").

c. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-140127(q) ("Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.").
ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand.

DATED AND EFFECTIVE this 6th day of April, 2017.

ARIZONA MEDICAL BOARD

By Patricia E. McSorley
Executive Director

CONSENT TO ENTRY OF ORDER

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Respondent acknowledges he has the right to consult with legal counsel regarding this matter.

2. Respondent acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

3. By consenting to this Order, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Order in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Order.

4. The Order is not effective until approved by the Board and signed by its Executive Director.

5. 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
6. Upon signing this agreement, and returning this document (or a copy thereof) to the Board's Executive Director, Respondent may not revoke the consent to the entry of the Order. 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.

7. This Order is a public record that will be publicly disseminated as a formal disciplinary action of the Board and will be reported to the National Practitioner's Data Bank and on the Board's web site as a disciplinary action.

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

9. **Respondent has read and understands the terms of this agreement.**

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DUANE WHITAKER, M.D.  

DATED: 3-24-2017

EXECUTED COPY of the foregoing mailed this 6th day of April, 2017 to:

Paul J. Giancola  
Snell & Wilmer, LLP  
400 E Van Buren  
Phoenix, AZ 85004-2202  
Attorney for Respondent
ORIGINAL of the foregoing filed
this ___ day of ___ , 2017 with:

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

[Signature]
Board Staff