.BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

DANIEL M. LIEBERMAN, M.D.

Holder of License No. 28519
For the Practice of Allopathic Medicine
In the State of Arizona.

Case No. MD-15-1106A

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR LETTER OF REPRIMAND

The Arizona Medical Board ("Board") considered this matter at its public meeting on October 4, 2017. Daniel M. Lieberman, M.D. ("Respondent") appeared before the Board for a Formal Interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue 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 number 28519 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-15-1106A after receiving a complaint regarding Respondent's care and treatment of a 47 year-old female patient ("BB") alleging failure to properly conduct surgery.

4. BB presented to Respondent on March 9, 2015 for chronic low back pain and leg pain. On February 24, 2015, Respondent reviewed an MRI performed on February 11, 2015. Respondent determined that the quality of the MRI was inadequate and recommended that another MRI be obtained. At the first visit, Respondent identified low back pain and leg pain (80:20 distribution), a normal neurological examination, and he reviewed the MRI showing L4-5 stenosis, facet hypertrophy, and possible synovial cyst. Respondent recommended a right L4-5 laminectomy. Respondent noted that if BB

continued to have low back pain, he then would treat her for "facet pathology." Respondent stated that a fusion was not needed since there was no instability. On March 11, 2015, BB was referred to cardiology for evaluation and surgery clearance.

5. On April 24, 2015, Respondent performed a bilateral L4-5 laminectomy and documented that it was "uncomplicated," even though an incidental durotomy was created and treated. There was no specific mention of right foraminal pathology.

6. At the first postoperative visit on May 15, 2015, Respondent noted that BB reported 80% relief, and "some foot drop." No detailed motor strength was documented. Respondent recommended a home program, and emailed the patient an exercise video. A telephone follow-up visit with the spine specialist in three weeks was planned.

7. On June 9, 2015 (telephone note), BB noted difficulty walking, a foot drop, and requested a physical therapy program referral. The office referred BB to physical therapy, and planned for a telephone visit in 2-3 weeks after physical therapy.

8. At the next postoperative visit on July 13, 2015, BB reported low back pain and pain down her right leg. Respondent noted new swelling of the right leg, with progression of the foot drop and reduced motor strength. Respondent ordered an ultrasound to rule out deep vein thrombosis, and an MRI. Respondent also recommended an ankle-foot splint and right L3-4 medial branch blocks to determine degree of facet involvement.

9. Respondent performed the procedure on July 13, 2015, and his report documented that BB informed him she experienced "100% relief of her low back pain." Respondent recommended an endoscopic facet rhizotomy.

10. Respondent's note dated July 15, 2015 documented that the "patient failed ESI" and an MRI showed "giant recurrent herniated disc." Based on this, Respondent

1 recommended urgent surgery, specifically to redo laminectomy as well as an interbody
2 graft/fusion with interspinous process instrumentation.

3 11. On July 16, 2015, BB was taken back to the operating room. Respondent
4 documented "difficult visualization due to body habitus," performed further decompression
5 and interbody fusion with implant and bone graft. Respondent elected to abandon the
6 original plan of placing interspinous process instrumentation, due to "secondary surgery,
7 diabetes, obesity, and another hour was not worth the risk." A nursing note from the
8 recovery room noted that BB was "unable to stand on right leg, right ankle weakness."

9 12. On July 22, 2015, BB called the office and reported bilateral lower extremity
10 weakness and inability to stand. After communicating with Respondent, his office advised
11 BB to "continue to walk, stay active, and stand."

12 13. On July 29, 2015, Respondent requested an MRI. He reviewed the results
13 and recommended urgent revision surgery for BB's recurrent herniated disc; however, BB
14 transferred her care to another surgeon.

15 14. BB was subsequently seen by another surgeon who documented that BB
16 had no strength in either ankle and was unable to flex her foot. BB was taken to the
17 operating room on August 6, 2015 by the second surgeon who found a dural tear and
18 epidural hematoma. BB was hospitalized for a prolonged time and achieved a mild to
19 moderate return in function of the left foot and ankle, but was unable to achieve
20 improvement in her right foot and ankle weakness.

21 15. The standard of care prohibits a physician from performing procedures
22 without proper indications. Respondent deviated from this standard of care by performing
23 procedures not indicated.

24 16. The standard of care for decompression surgeries requires a physician to
25 appropriately perform and confirm adequate decompression of the neural elements

affected by the presumed pathology. Respondent deviated from this standard of care by improperly performing two operations, both of which missed the primary offending pathology.

17. The standard of care requires a physician to adequately follow up with the patient in the postoperative setting, including face-to-face visits in the presence of neurologic deficits and known intraoperative complications. Respondent deviated from this standard of care by failing to adequately follow up with BB postoperatively, including lack of face-to-face visits in the presence of neurologic deficits and known intraoperative complications.

18. The standard of care for a postoperative patient complaining of weakness in both legs and the inability to stand requires a physician to timely obtain a postoperative MRI. Respondent deviated from this standard of care in that there was a significantly inappropriate delay in obtaining a postoperative MRI in spite of BB's complaint that both legs were weak and that she was unable to stand.

19. The standard of care requires a physician to evaluate a postoperative patient in the recovery room who nursing staff reported was unable to ambulate. Respondent deviated from this standard of care by failing to evaluate a postoperative patient in the recovery room who was reported by a nurse not to be able to ambulate.

20. Actual patient harm was identified in that BB presented with chronic low back pain and right leg pain. The initial MRI showed spinal stenosis at L4-5 and a right foraminal synovial cyst. After the first operation, BB had a significant postoperative deficit of a right foot drop. A postoperative MRI revealed persistent pathology, so a second operation was performed, but partially aborted. After the second operation, BB had bilateral complete foot drop, and plantar flexor weakness, consistent with severe bilateral nerve root or cauda

equine injury. BB was required to undergo a third surgery from another surgeon to achieve some neurological return of function.

21. There was the potential for patient harm in that BB is at significant risk for pseudoarthrosis, further instability, and need for even further surgery. BB is also at risk for non-union of the L4-5 segment, since no instrumentation was used to supplement the interbody and posterolateral fusion at the time of the second surgery. Respondent is the holder of license number 28519 for the practice of allopathic medicine in the State of Arizona.

2. During a Formal Interview on this matter, Respondent agreed that when the patient called the office complaining of an inability to stand, his office staff should have been trained to ask if the problem was new, which may have resulted in the patient being evaluated sooner.

3. During that same Formal Interview, Board members commented that while some of the more technical issues, such as the decision not to apply hardware and fixate and the misread of the MRI may have been understandable with hindsight, the lack of face-to-face contact with the patient remained concerning. Board members agreed that when faced with this difficult set of circumstances, the physician should have been more personally involved in the patient's follow up care.

CONCLUSIONS OF LAW

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

2. The conduct and circumstances described above constitute unprofessional conduct 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.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand.

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 AND EFFECTIVE this 7th day of December, 2017.

ARIZONA MEDICAL BOARD

By [signature]
Patricia E. McSorley
Executive Director

EXECUTED COPY of the foregoing mailed
this 7th day of December, 2017 to:

Robert J. Milligan
Milligan Lawless, PC
5050 N 40th St, Suite 200
Phoenix, AZ 85018
Attorney for Respondent

ORIGINAL of the foregoing filed
this 7th day of December, 2017 with:

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

Mary Bober

Board staff