

BEFORE THE STATE MEDICAL BOARD OF OHIO

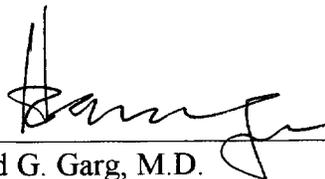
IN THE MATTER OF

DAVID A. ZACKOWSKI, M.D.

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:
:

ORDER AND ENTRY

On or about September 13, 2000, notice was issued to David A. Zackowski, M.D., that the State Medical Board of Ohio intended to consider disciplinary action against his license to practice medicine and surgery in the State of Ohio. The Board having subsequently been notified of Dr. Zackowski's demise on or about November 30, 2000, it is hereby ORDERED that the above referenced matter be and is hereby dismissed as MOOT.



Anand G. Garg, M.D.
Secretary

SEAL

DECEMBER 13, 2000
Date

Mailed December 13, 2000



State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/466-3934 • Website: www.state.oh.us/med/

September 13, 2000

David A. Zackowski, M.D.
4310 E. Mountain Vista Road
Phoenix, Arizona 85044

Dear Doctor Zackowski:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On May 3, 2000, the Arizona State Board of Medical Examiners (hereinafter the "Arizona Board") issued its Findings of Fact, Conclusions of Law and Order reprimanding you and placing you on probation for three (3) years.

The probationary terms and conditions of the Arizona Board Order include that you shall complete ten (10) hours of Category I Continuing Medical Education in medical records and pay a disciplinary civil penalty of \$3,000.00 as well as the costs of the formal hearing.

The Arizona Board concluded that the conduct and circumstances regarding your diagnosis and treatment of Patient I.R., on whom you performed five (5) amputations between April and December 1994, constituted unprofessional conduct in your practice as a plastic surgeon and hand surgeon, as is more fully set forth in the Arizona Board Findings of Fact, Conclusions of Law and Order which is attached hereto and fully incorporated herein.

The Arizona Board Findings of Fact, Conclusions of Law and Order, as alleged in paragraph (1) above, constitutes "[a]ny of the following actions taken by the state agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand;" as that language is used in Section 4731.22(B)(22), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

Mailed 9/14/00

David A. Zackowski, M.D.

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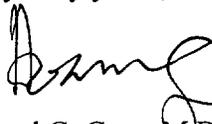
You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # Z 281 981 584
RETURN RECEIPT REQUESTED

303 East Baseline Road, Suite 306
Phoenix, Arizona 85040
CERTIFIED MAIL # Z 281 981 585
RETURN RECEIPT REQUESTED

Stephen P. Forest, Esq.
Teilborg, Sanders & Parks
3030 North Third Street
Phoenix, Arizona 85012-3099
CERTIFIED MAIL # Z 281 981 586
RETURN RECEIPT REQUESTED

1 5. Dr. Reiff, patient I.R.'s primary physician, referred I.R. to Respondent for her
2 complaints of shooting pain in her left hand and her left middle finger that had turned black.

3 6. Respondent first saw patient I.R. on March 31, 1994. Patient I.R. was approximately
4 65 years old and a heavy smoker.¹ Respondent's chart notes show that patient I.R.'s blood pressure
5 was taken in her left arm, but no notation was made regarding any blood pressure taken in her right
6 arm. Respondent did not record brachial, radial, or ulnar pulses on I.R.'s left side at the initial
7 physical examination.

8 7. After performing his initial examination of patient I.R., Respondent diagnosed her
9 with Buerger's disease.

10 8. Thromboangiitis Obliterans ("TAO"), commonly referred to as Buerger's disease, is
11 a nonatherosclerotic inflammatory obliterative disease of the small and medium-sized arteries.
12 Buerger's disease is a rare disease.

13 9. Respondent received training at the Cleveland Clinic Foundation in Cleveland, Ohio.
14 While in training there, Respondent was exposed to patients diagnosed with Buerger's disease.

15 10. Buerger's disease is commonly confused with atherosclerosis and idiopathic arterial
16 thrombosis.

17 11. Although patient I.R. did not fit the standard profile for a Buerger's patient, the
18 disease has progressed to include an increasing number of older smoking women.

19 12. Credible Buerger's disease research² suggests that an important differential diagnosis
20 in the older age group is underlying atherosclerosis. The research stresses the importance of
21 performing arteriography on such patients to ensure that there is no arteriosclerosis and no proximal
22 source of emboli.

23 13. Heavy tobacco usage is a strong contributing factor to the development and
24 continuation of symptoms of Buerger's disease.

25
26 ¹ Patient I.R. smoked approximately 2 ½ packs of cigarettes daily on average.

27 ² The Changing Clinical Spectrum of Thromboangiitis Obliterans (Buerger's Disease) by Jeffrey W. Olin,
28 D.O., et al (Respondent's Exhibit R3).

1 14. Initially Respondent treated patient I.R. with medication and recommended that she
2 quit smoking. Although Respondent reduced her quantity of smoking for a period of time, she never
3 quit.

4 15. Respondent is found to have used his best efforts to try to get I.R. to stop smoking.

5 16. Patient I.R.'s failure to stop smoking is found to have been a significant contributing
6 factor in her deteriorating medical condition.

7 17. When patient I.R.'s condition did not improve, Respondent performed surgery. He
8 performed five surgeries on patient I.R. between April and December 1994. During those surgeries,
9 Respondent amputated I.R.'s left middle finger, left index finger, left ring finger, left fifth finger and
10 thumb.³ Respondent continued to treat I.R. without considering a diagnosis other than Buerger's
11 disease. Respondent did not order an arteriogram or obtain a second opinion from a colleague.

12 18. Despite the treatment with medication and amputations, patient I.R.'s condition
13 continued to worsen. Dr. Reiff referred I.R. to William L. Lovett, M.D. Dr. Lovett suspected that
14 I.R. had an arterial blockage rather than Buerger's disease. Dr. Lovett referred patient I.R. to Scott
15 Hillmann, M.D., for diagnostic testing including arteriogram.

16 19. Dr. Hillmann diagnosed a subclavian blockage after conducting an arteriogram. Dr.
17 Hillmann thereafter performed surgery on I.R. to by-pass the blockage. At that point, patient I.R.'s
18 left hand was nonviable and it was amputated on January 18, 1995.

19 20. Respondent failed to properly diagnose and treat arterial occlusive disease of patient
20 I.R.'s left upper extremity.

21 21. Respondent is found to have failed to maintain adequate records on patient I.R. His
22 medical records are minimal at best. The physicians testifying at the hearing had difficulty both
23 reading and analyzing those medical records due to Respondent's illegible handwriting and the lack
24 of sufficient recording. Respondent claims that he did "charting by exception," meaning that he did
25 not enter normal blood pressure and pulse measurements. There is conflicting expert testimony as
26

27 ³ The Board has added references to the amputation of the left fifth finger and thumb to
28 make this finding more complete.

1 to whether or not "charting by exception" is a proper and accepted medical recording practice.
2 Under all the circumstances, Respondent's medical records are so poor that he should have gone to
3 the opposite extreme of including every detail into I.R.'s medical records.

4 22. While Respondent's diagnosis of Buerger's disease may be supported by the evidence
5 of record, the rapid progression of patient I.R.'s symptoms warranted the consideration and/or
6 investigation of other diagnosis.

7 23. Despite Respondent's reluctance to subject I.R. to an arteriogram due to the inherent
8 health risks of that procedure and the stroke of a patient of his who had a recent arteriogram, the
9 scholarly research coupled with I.R.'s rapid progression of symptoms resulting in numerous
10 amputations warranted an arteriogram for I.R. for further diagnostic evaluation by Respondent.

11 CONCLUSIONS OF LAW

12 1. BOMEX possesses jurisdiction over the subject matter hereof and over Respondent.

13 2. The conduct and circumstances described in the above-described Findings of Fact
14 constitute unprofessional conduct by Respondent pursuant to A.R.S. § 32-1401(25)(q) (any conduct
15 or practice which is or might be harmful or dangerous to the health of the patient or public).

16 3. The conduct and circumstances described in the above Findings of Fact constitute
17 unprofessional conduct by Respondent pursuant to A.R.S. § 32-1401(25)(e) (failing or refusing to
18 maintain adequate records on a patient).

19 4. The conduct and circumstances described in the above Findings of Fact constitute
20 unprofessional conduct by Respondent pursuant to A.R.S. § 32-1401(25)(ll) (conduct that the board
21 determines is gross negligence, repeated negligence or negligence resulting in harm to or death of
22 a patient).

23 5. Pursuant to the provisions of A.R.S. § 32-1451(l), BOMEX, in addition to any other
24 disciplinary action, may impose a civil penalty in the amount of not less than \$300.00 nor more than
25 \$10,000.00 for each violation of A.R.S. § 32-1401 et seq. The evidence of record supports
26 BOMEX's imposition of a civil penalty against Respondent in this matter.

27 6. BOMEX has the authority, pursuant to A.R.S. § 32-1451(L), to assess the costs of
28 formal hearing against a licensee who has been found to have violated the provisions of A.R.S. § 32-

1 1401 et seq. BOMEX should assess the costs of this formal hearing against Respondent.

2 **ORDER**⁴

3 In view of the foregoing, it is ordered that Respondent receive a Letter of Reprimand for the
4 matters described above.

5 It is further ordered, that Respondent is hereby placed on probation for three years from the
6 date of this Order. As a condition of probation, Respondent shall successfully complete a ten hours
7 of Category 1 Continuing Medical Education in medical records approved in advance by BOMEX
8 staff. As an additional term of probation, Respondent shall be subject to review of his medical
9 records by BOMEX staff at dates and times set at the discretion BOMEX staff.

10 It is further ordered that Respondent shall pay a civil penalty in the amount of \$3,000, and
11 in addition to the disciplinary civil penalty, that the Respondent pay the costs of the formal hearing
12 in this matter. The penalty and costs shall be paid within ninety days of the date of this Order, unless
13 extended by BOMEX. If the penalty and costs are not paid within the required time, Respondent's
14 license shall be suspended until the penalty and costs are paid in full.

15 **RIGHT TO PETITION FOR REVIEW**

16 The parties are hereby notified that they have the right to petition for a rehearing. Pursuant
17 to A.R.S. § 41-1092.09, as amended, the petition for rehearing must be filed with the Board's
18 Executive director within thirty (30) days after service of this Order and pursuant to A.A.C. R4-16-
19 102, it must set forth legally sufficient reasons for granting a rehearing. Service of this Order is
20 effective five (5) days after the date of mailing.

21 The parties are further notified that the filing of a petition for rehearing is required to preserve
22 any rights of appeal to the Superior Court that they may wish to pursue.

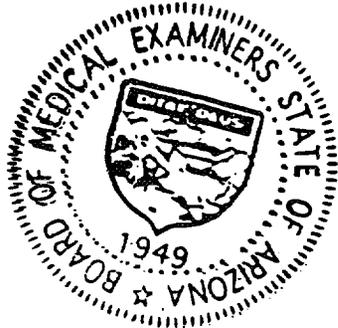
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27 ⁴ The Board changed the Order from that recommended by the ALJ to reflect its determination of the
28 appropriate discipline in this matter.

1 DATED this 3rd day of May, 2000.



BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

By: Claudia Foutz
CLAUDIA FOUTZ
Executive Director

8 ORIGINAL of the foregoing
9 filed this 3rd day of May, 2000,
with:

10 ARIZONA BOARD OF MEDICAL EXAMINERS
11 1651 East Morten, Suite 210
Phoenix, AZ 85020

12 Copy of the foregoing filed this
13 3rd day of May, 2000, with:

14 Cliff J. Vanell, Director
15 Office of Administrative Hearings
1400 W. Washington, Ste. 101
Phoenix, AZ 85007

16 Copy of the foregoing mailed,
17 via certified mail, this 3rd
18 day of ~~February~~ May, 2000, to:

19 David Zackowski, M.D.
20 303 E. Baseline
Suite 306
Phoenix, AZ. 85040

21 Copy of the foregoing mailed,
22 this 3rd day of May, 2000, to:

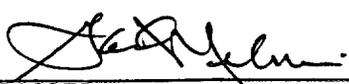
23 Stephen Paul Forest
24 Teilborg, Sanders & Parks
3030 N. 3rd St., Ste. 1300
Phoenix, AZ. 85012-3099

25 ...
26 ...
27 ...

1 One copy sent Interagency mail to:

2 Gordon Bueler
3 BOMEX
4 1651 E. Morten
Phoenix, AZ 85020

5 Thomas J. Dennis
6 Assistant Attorney General
7 1275 West Washington
8 Phoenix, AZ 85007

9 
10 310972

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| <p>5. Received By: (Print Name)</p> <p><i>VICTORIA J. Lopez</i></p> | | <p>4a. Article Number</p> <p><i>Z 353 806 459</i></p> | |
| <p>6. Signature (Addressee or Agent)</p> <p><i>X Victoria J. Lopez</i></p> | | <p>4b. Service Type</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified</p> <p><input type="checkbox"/> Express Mail <input type="checkbox"/> Insured</p> <p><input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD</p> | |
| <p>7. Date of Delivery</p> <p><i>5/16/00 MTH</i></p> | | <p>8. Addressee's Address (Only if requested and fee is paid)</p> | |

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INV# 9956

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