

1 BEFORE THE BOARD OF MEDICAL EXAMINERS

2 IN THE STATE OF ARIZONA

3 In the Matter of

Investigation No. 8789

4 **SAMUEL NATHAN POZNER, M.D.**

**CONSENT AGREEMENT AND
ORDER FOR DECREE OF
CENSURE AND PRACTICE
RESTRICTION**

5 Holder of License No. **11663**

6 For the Practice of Medicine

7 In the State of Arizona,

8 Respondent.

9 **CONSENT AGREEMENT**

10 **RECITALS**

11
12 In the interest of a prompt and judicious settlement of this case, consistent with the public
13 interest, statutory requirements and responsibilities of the Arizona State Board of Medical Examiners
14 (“Board”), and under A.R.S. §§ 32-1401 *et seq.* and 41-1092.07(F)(5), Samuel Nathan Pozner, M.D.,
15 holder of license number 11663 to practice allopathic medicine in the State of Arizona
16 (“Respondent”), and the Board enter into the following Recitals, Findings of Fact, Conclusions of
17 Law and Order (“Consent Agreement”) as the final disposition of this matter.
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19 1. Respondent has read and understands this Consent Agreement as set forth herein, and
20 has had the opportunity to discuss this Consent Agreement with an attorney or has waived the
21 opportunity to discuss this Consent Agreement with an attorney. Respondent voluntarily enters into
22 this Consent Agreement for the purpose of avoiding the expense and uncertainty of an administrative
23 hearing.
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25 2. Respondent understands that he has a right to a public administrative hearing
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1 concerning each and every allegation set forth in the above-captioned matter, at which administrative
2 hearing he could present evidence and cross-examine witnesses. By entering into this Consent
3 Agreement, Respondent freely and voluntarily relinquishes all right to such an administrative
4 hearing, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or any
5 other administrative and/or judicial action, concerning the matters set forth herein. Respondent
6 affirmatively agrees that this Consent Agreement shall be irrevocable.
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8 3. Respondent agrees that the Board may adopt this Consent Agreement or any part of
9 this agreement, under A.R.S. § 32-1451(G)(5). Respondent understands that this Consent
10 Agreement or any part of the agreement may be considered in any future disciplinary action against
11 him.
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13 4. Respondent understands that this Consent Agreement does not constitute a dismissal
14 or resolution of other matters currently pending before the Board, if any, and does not constitute any
15 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other
16 pending or future investigation, action or proceeding. Respondent also understands that acceptance
17 of this Consent Agreement does not preclude any other agency, subdivision or officer of this state
18 from instituting other civil or criminal proceedings with respect to the conduct that is the subject of
19 this Consent Agreement.
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21 5. Respondent acknowledges and agrees that, upon signing this Consent Agreement and
22 returning this document to the Board's Executive Director, Respondent may not revoke his
23 acceptance of the Consent Agreement or make any modifications to the document, regardless of
24 whether the Consent Agreement has been issued by the Executive Director. Any modification to this
25 original document is ineffective and void unless mutually approved by the parties in writing.
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1 1. The Board possesses jurisdiction over the subject matter and over Respondent as a
2 licensee of the Board, under A.R.S. § 32-1401, *et seq.*

3 2. The Board is the duly constituted authority for the regulation and control of the
4 practice of allopathic medicine in the State of Arizona.

5 3. Respondent is the holder of License No. 11663 for the practice of allopathic medicine
6 in the State of Arizona.

7 4. In April of 1995, the Board received a letter from Mercy Care Plan (Board
8 Investigation No. 8789) stating that during a cold knife conization of the cervix of a female patient
9 (hereinafter referred to by patient's initials, "R.J.P."), Respondent perforated R.J.P.'s sigmoid colon,
10 which is a complication surgeons strive to avoid. Because of this, concerns were raised by the Board
11 concerning the Respondent's competence.

12 5. Respondent was invited to an informal interview with the Board on January 24, 1997
13 and did appear to discuss his care treatment of patient R.J.P. and the results of an office survey
14 conducted by Board staff. At that time, Respondent was ordered to take and pass (i.e., a score of at
15 least 75) the Special Purpose Examination (hereinafter "SPEX") within ten weeks and to undergo
16 psychiatric, psychometric and physical examinations.

17 6. On February 6, 1997, the Board issued an Amended Interim Order ("Interim Order")
18 to Respondent ordering that he take and pass the SPEX Exam within ten weeks of the Interim Order,
19 and to undergo physician, psychiatric and psychological/psychometric testing within ninety days of
20 the Interim Order.

21 7. Respondent took the SPEX examination on October 15, 1997, and received a score
22 of 74, with high marks in the fields in which he usually practices, such as reproductive anatomy,
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1 hematology, and neurology. Dr. Pozner had difficulty taking the examination since it was only
2 offered by computer.

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4 8. On March 20, 1997, Respondent was evaluated by Dr. Phillip Lett, Ph.D., for the
5 psychological/psychometric portion of the Board ordered evaluations. On March 27, 1997,
6 Respondent underwent a physical examination and evaluation by John Curtin, M.D. On March 28,
7 1997, Respondent was interview by Dr. Michael Brennan, M.D., for the psychiatric portion of the
8 Board ordered evaluations. The written reports submitted by the aforementioned health care
9 professionals did not disclose substantial evidence establishing Respondent's lack of professional
10 fitness to continue practicing medicine.
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12 CONCLUSIONS OF LAW

13 1. The Board is the duly constituted authority for the regulation and control of the
14 practice of allopathic medicine in the State of Arizona, under A.R.S. § 32-1401, *et seq.*

15 2. The conduct and circumstances described above regarding Respondent's treatment
16 of patient R.J.P. constitutes unprofessional conduct under A.R.S. § 32-1401(25)(q) ([a]ny conduct
17 or practice which is or might be harmful or dangerous to the health of the patient or the public).

18 3. The conduct and circumstances described above regarding Respondent's failure to
19 pass the SPEX examination constitutes unprofessional conduct under A.R.S. § 32-1401(25)(r)
20 ([v]iolating a formal order, probation, consent agreement or stipulation issued or entered into by the
21 board or its executive director under the provisions of this chapter).
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24 ORDER

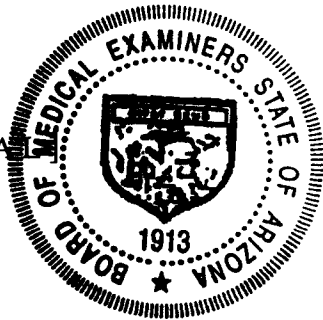
25 Based upon the above Findings of Fact and Conclusions of Law and under the authority
26 granted to the Board by A.R.S. § § 41-1092.07(F)(5) and 32-1451,

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IT IS HEREBY ORDERED that:

1. Respondent is hereby issued a Decree of Censure for the unprofessional conduct described above.
2. Respondent shall not perform any type of surgical procedure, including but not limited to, minor out-patient surgical procedures, surgery with laser, biopsy, conization or incision and drainage, until Respondent meets with the Board and affirmatively receives the Board's approval to return to surgical practice. The Board may require any combination of Board staff approved physical examinations, psychiatric and/or psychological evaluations or successful passage of the Special Purpose Licensing Examination or other competency examinations/evaluations or interviews it finds to assist it in determining Respondent's ability to safely and competently perform surgical procedures.

DATED AND EFFECTIVE this 17th day of August, 2001.



[SEAL]

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

By Claudia Foutz
 CLAUDIA FOUTZ
 Executive Director
 TOM ADAMS
 Assistant Director - Regulation

ORIGINAL of the foregoing mailed
this 20 day of August, 2001, to:

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

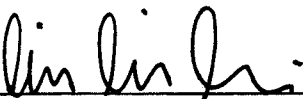
1 COPY of the foregoing mailed by
2 U.S. Certified Mail this 20 day of
3 August, 2001 to:

4 Samuel N. Pozner, M.D.
5 2939 E. Drachman Street
6 Tucson, Arizona 85716

7 COPY of the foregoing mailed
8 this 20 day of August, 2001, to:

9 Tom Slutes, Esq.
10 Slutes Sakrison Grant Hill & Rubin P.C.
11 33 North Stone St., Suite 1100
12 Tucson, AZ 85701-1489
13 Attorney for Respondent

14 Roberto Pulver
15 Assistant Attorney General
16 1275 W. Washington, CIV/LES
17 Phoenix, Arizona 85007
18 Attorney for the State

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