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7 **BEFORE THE ARIZONA STATE BOARD OF MEDICAL EXAMINERS**

8  
9 In the Matter of:

Investigation Case Nos. MD-00-0707 and  
MD-01-0114.

10 **WALLACE K. NAKAGAWA, M.D.**  
11 Holder of License No. 20760  
12 For the Practice of Medicine  
13 In the State of Arizona,

**CONSENT AGREEMENT AND  
ORDER FOR STAYED REVOCATION  
WITH PRACTICE SUSPENSION**

14 Respondent.

15 **CONSENT AGREEMENT**

16 **RECITALS**

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18 In the interest of a prompt and judicious settlement of this case, consistent with the  
19 public interest, statutory requirements and responsibilities of the Arizona State Board of  
20 Medical Examiners ("Board"), and under A.R.S. §§ 32-1401 *et seq.*, and 41-1092.07(F)(5),  
21 Wallace K. Nakagawa, M.D., holder of license number 20760 to practice allopathic  
22 medicine in the State of Arizona ("Respondent"), and the Board enter into the following  
23 Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as the  
24 final disposition of this matter.  
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1           1.     Respondent has read and understands this Consent Agreement as set forth  
2 herein, and has had the opportunity to discuss this Consent Agreement with an attorney.  
3  
4 Respondent voluntarily enters into this Consent Agreement for the purpose of avoiding the  
5 expense and uncertainty of an administrative hearing.

6           2.     Respondent understands that he has a right to a public administrative hearing  
7 concerning each allegation set forth in the above-captioned matter, at which administrative  
8 hearing he could present evidence and cross-examine witnesses. By entering into this  
9 Consent Agreement, Respondent freely and voluntarily relinquishes all rights to such an  
10 administrative hearing, as well as all rights of rehearing, review, reconsideration, appeal,  
11 judicial review or any other administrative and/or judicial action, concerning the matters set  
12 forth herein.  
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15           3.     Respondent agrees that the Board may adopt this Consent Agreement or any  
16 part of this agreement, under A.R.S. § 32-1451(G)(5). Respondent understands that this  
17 Consent Agreement or any part of the agreement may be considered in any future  
18 disciplinary action against him.  
19

20           4.     Respondent understands this Consent Agreement deals with Board  
21 Investigations Case Nos. MD-00-0707 and MD-01-0114 involving allegations of  
22 unprofessional conduct against Respondent. The investigation into these allegations against  
23 Respondent shall be concluded upon the Board's adoption of this Consent Agreement.  
24

25           5.     Respondent understands that this Consent Agreement does not constitute a  
26

1 dismissal or resolution of other matters currently pending before the Board, if any, and does  
2 not constitute any waiver, express or implied, of the Board's statutory authority or  
3 jurisdiction regarding any other pending or future investigation, action or proceeding.  
4 Respondent also understands that acceptance of this Consent Agreement does not preclude  
5 any other agency, subdivision or officer of this state from instituting any other civil or  
6 criminal proceedings with respect to the conduct that is the subject of this Consent  
7 Agreement.  
8

9  
10 6. Respondent acknowledges and agrees that, upon signing this Consent  
11 Agreement and returning this document to the Board's Executive Director, Respondent may  
12 not revoke his acceptance of the Consent Agreement or make any modifications to the  
13 document, regardless of whether the Consent Agreement has been issued by the Executive  
14 Director. Any modification to this original document is ineffective and void unless mutually  
15 approved by the parties in writing.  
16

17  
18 7. Respondent understands that this Consent Agreement shall not become  
19 effective unless and until adopted by the Board and signed by its Executive Director.

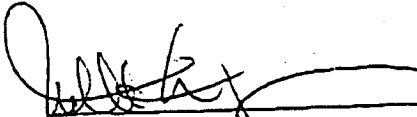
20  
21 8. Respondent understands and agrees that if the Board does not adopt this  
22 Consent Agreement, he will not assert as a defense that an administrative hearing was not  
23 conducted within sixty days as provided by A.R.S. § 32-1451(D) following the Board's  
24 Interim Order of Summary Suspension dated June 25, 2001, or that the Board's  
25 consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other  
26

1 similar defense.


2 9. Respondent understands that this Consent Agreement is a public record that  
3 may be publicly disseminated as a formal action of the Board, and shall be reported as  
4 required by law to the National Practitioner Data Bank and the Healthcare Integrity and  
5 Protection Data Bank.  
6

7 10. Respondent understands that any violation of this Consent Agreement  
8 constitutes unprofessional conduct under A.R.S. § 32-1401(25)(r)([v]iolating a formal order,  
9 probation, consent agreement or stipulation issued or entered into by the board or its  
10 executive director under the provisions of this chapter) and shall result in disciplinary action  
11 under A.R.S. § 32-1451.  
12

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14  
15  
16 DATED: 10/25/01

  
WALLACE K. NAKAGAWA, M.D.

17  
18 Reviewed and Approved as to form:

19  
20 By:   
21 DWAYNE ROSS, ESQ.  
Attorney for Respondent

22 **FINDINGS OF FACT**

23 By stipulation of the parties, this Consent Agreement is entered into for final  
24 disposition of the matters described therein. Respondent acknowledges that sufficient  
25 evidence exists for the Board to make the following Findings of Fact:  
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1           11. The Board is the duly constituted authority for the regulation and control of  
2 the practice of allopathic medicine in the State of Arizona.

3           12. Respondent is the holder of License No. 20760 for the practice of allopathic  
4 medicine in the State of Arizona.

5           13. On November 3, 2000, after an investigation into the competency of Dr.  
6 Nakagawa, the Board issued an Interim Order that within six months of the date of the  
7 Order, Dr. Nakagawa be evaluated by the Post Licensure Assessment System ("PLAS")  
8 offered by the Federation of State Medical Boards.

9           14. On June 22, 2001, Dr. Nakagawa admitted to the Board that he had failed to  
10 follow the Board's Interim Order to be evaluated by PLAS.

11           15. In January 2001, Dr. Nakagawa was suspended from the staff of Northern  
12 Cochise Community Hospital for failing to complete patient medical records in a timely  
13 manner.

14           16. On April 4, 2001, Northern Cochise Community Hospital reinstated Dr.  
15 Nakagawa's hospital privileges.

16           17. On April 26, 2001, Northern Cochise Community Hospital issued a Letter of  
17 Reprimand and a Probationary Order to Dr. Nakagawa.

18           18. In May 2001, Northern Cochise Community Hospital revoked Dr. Nakagawa's  
19 hospital privileges for failing to complete patient medical records in a timely manner and  
20 violating the Probationary Order.

21           19. An investigation conducted by Board staff disclosed that Dr. Nakagawa was  
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1 not providing adequate physician coverage when he was absent from his acute care and  
2 long-term care patients admitted to Northern Cochise Community Hospital.

3  
4 20. On April 9, 2001, the Board issued an Interim Order to Dr. Nakagawa to  
5 undergo psychiatric evaluation. Dr. Michael Brennan evaluated Dr. Nakagawa. The  
6 evaluation disclosed problems that may interfere with Dr. Nakagawa's ability to mentally  
7 and physically practice medicine.

8  
9 21. On June 25, 2001, after findings that the public health, safety and welfare  
10 imperatively required emergency action, the Board issued a Summary Suspension to Dr.  
11 Nakagawa's allopathic license pending an administrative hearing under A.R.S. § 32-  
12 1451(D).

### 13 CONCLUSIONS OF LAW

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15 22. The Board possesses jurisdiction over the subject matter and over Respondent  
16 as a licensee of the Board, under A.R.S. § 32-1401, *et seq.*

17  
18 23. The conduct and circumstances described above constitute unprofessional  
19 conduct under A.R.S. § 32-1401(25)(e) ([f]ailing or refusing to maintain adequate records  
20 on a patient).

21  
22 24. The conduct and circumstances described above constitute unprofessional  
23 conduct under A.R.S. § 32-1401(25)(q) ([a]ny conduct or practice which is or might be  
24 harmful or dangerous to the health of the patient of the public).

25  
26 25. The conduct and circumstances described above constitute unprofessional  
conduct under A.R.S. § 32-1401(25)(r) ([v]iolating a formal order, probation, consent

1 agreement or stipulation issued or entered into by the board or its executive director under  
2 the provisions of this chapter).

### 3 ORDER

4  
5 Based upon the above Findings of Fact and Conclusions of Law and under the  
6 authority granted to the Board by A.R.S. §§ 41-1092.07(F)(5) and 32-1451(F), it is hereby  
7 ordered that:

8  
9 26. The Board's Interim Order of Summary Suspension, dated June 25, 2001, is  
10 vacated and that License No. 20760, issued to Respondent for the practice of allopathic  
11 medicine in the State of Arizona, is REVOKED. The revocation, however, is STAYED and  
12 Respondent is immediately SUSPENDED from the practice of clinical medicine or any  
13 medicine involving direct patient care, and is prohibited from prescribing any form of  
14 treatment including prescription medications, until he meets with the Board and  
15 affirmatively receives the Board's approval to return to practice.

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18 27. Before Respondent meets with the Board to seek its approval to return to  
19 practice, Respondent shall submit to comprehensive psychological and psychiatric  
20 evaluations to determine whether he is medically incompetent or mentally or physically  
21 unable to practice allopathic medicine within sixty days after the effective date of this  
22 Consent Agreement. The evaluations shall include a diagnostic examination of Respondent  
23 to determine whether he has an addiction to gambling or any other addictions. The  
24 psychologist and psychiatrist who perform the evaluations upon Respondent must be  
25 approved by Board staff prior to Respondent submitting to the evaluations. Respondent  
26

1 shall be responsible for all expenses and costs associated with the evaluations, and shall have  
2 the psychologist and psychiatrist directly submit their evaluations and recommendations to  
3 Board staff. Respondent shall deliver a written medical records release, which release must  
4 be approved by Board staff, to the psychologist and psychiatrist allowing them to release the  
5 evaluations and any other information obtained during those evaluations to the Board and  
6 its staff. Respondent shall provide the psychologist and the psychiatrist with the copy of this  
7 Consent Agreement.  
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9  
10 28. Before Respondent meets with the Board to seek its approval to return to  
11 practice, Respondent shall enroll for the PLAS evaluation within ninety days after the  
12 effective date of this Consent Agreement. Respondent shall give written notification to  
13 PLAS that all records and recommendations from the evaluation be sent directly to the  
14 Board and its staff. Respondent shall be responsible for all expenses and costs associated  
15 with the PLAS evaluation. Respondent shall provide PLAS with a copy of this Consent  
16 Agreement.  
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18  
19 29. Before receiving the Board's approval to return to practice, Respondent shall  
20 undergo and successfully complete any further evaluation or treatment the Board deems  
21 necessary to assist it in determining Respondent's ability to safely and competently return  
22 to the active practice of medicine.  
23

24 30. Respondent agrees that the Board's determination of any further evaluation  
25 or treatment of Respondent is final and binding upon him, and there is no appeal or any  
26 other type of action of the Board's determination to any administrative or judicial court of



1 competent jurisdiction.

2       31. Respondent agrees and is aware that the Board in its sole, complete, and  
3 absolute discretion may determine, after reviewing all evaluations and recommendations,  
4 that Respondent cannot be rehabilitated to return to the active practice of medicine, and the  
5 Board may lift the stay against Respondent and revoke his license. Alternatively, the Board  
6 may order, but is not limited to, the following courses of action or any combination of them  
7 to allow Respondent to return to the active practice of medicine: suspension, probation,  
8 practice restrictions, monitoring by another physician, continuing medical education,  
9 additional examinations, mini-residency, and etc.

10       32. Respondent agrees that any Board determination on when Respondent can  
11 return to the active practice of medicine is a final and binding decision, and there is no  
12 appeal or any other type of action of the Board's determination to any administrative or  
13 judicial court of competent jurisdiction.

14       33. This Consent Agreement is a public record.

15       34. Respondent shall obey all federal, state, and local laws, and rules governing  
16 the practice of medicine in Arizona, and remain in full compliance with any medical board  
17 or court ordered administrative, civil, or criminal probation, payments or other orders.

18       35. Respondent shall submit quarterly declarations under penalty of perjury on  
19 forms provided by the Board, stating whether there has been compliance with all the  
20 conditions of the Consent Agreement. The declarations shall be submitted on or before the  
21 15<sup>th</sup> of March, June, September, and December of each year.

1           36. Respondent agrees the Board or its designee shall have sole, complete and  
2 absolute discretion to determine whether Respondent has violated the Consent Agreement.  
3 Any violation of the Consent Agreement as determined by the Board or its designee shall  
4 cause Respondent's stay to be lifted and his allopathic license shall be immediately revoked.

5           37. Respondent unequivocally and absolutely relinquishes and waives all rights  
6 before any administrative, state or federal court of competent jurisdiction to rehear, review,  
7 reconsider, appeal or any other type of administrative and/or judicial action concerning the  
8 Board's, or its designee's, determination that Respondent violated the Consent Agreement  
9 which shall lift Respondent's stay and revoke his allopathic license.

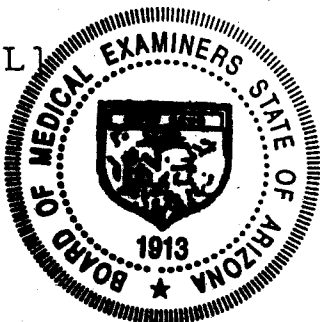
10           38. Respondent agrees and is aware that the only opportunity granted to him to  
11 present information to the Board or its designee that he has not violated the Consent  
12 Agreement is a discussion before the Board on the alleged violation(s). The Board or its  
13 designee will provide a written notice to Respondent of the alleged violation(s) and the date,  
14 time, and place where the discussion will be held. Respondent can be represented by an  
15 attorney at that discussion. The discussion is not an evidentiary-type hearing, but a dialogue  
16 between the parties. Respondent can waive his opportunity for discussion before the Board  
17 or its designee. The Board's, or its designee's, determination that Respondent has violated  
18 the Consent Agreement is a final and binding decision on Respondent, and as stated in the  
19 above paragraph there is no appeal from that decision. Upon receipt of the Board's, or its  
20 designee's, written decision that Respondent violated the Consent Agreement, Respondent

1 shall immediately surrender his allopathic license to the Board.

2 DATED AND EFFECTIVE this 7<sup>th</sup> day of November 2001.

3 BOARD OF MEDICAL EXAMINERS  
4 OF THE STATE OF ARIZONA

5 [SEAL]



6 By Claudia Foutz  
7 CLAUDIA FOUTZ  
8 Executive Director  
9 TOM ADAMS  
10 Deputy Director

11 COPY of the foregoing mailed by  
12 U.S. Certified Mail this 7<sup>th</sup> day of  
13 November, 2001 to:

14 Wallace K. Nakagawa, M.D.  
15 903 North Bowie  
16 Wilcox, Arizona 85643  
Respondent

17 COPY of the foregoing mailed  
18 this 7<sup>th</sup> day of November, 2001, to:

19 Dwayne Ross, Esq.  
20 Robbins & Green, P.A.  
21 3300 N. Central Avenue, Suite 1800  
22 Phoenix, Arizona 85012-2518  
Attorney for Respondent

23 Roberto Pulver  
24 Assistant Attorney General  
25 1275 W. Washington, CIV/LES  
26 Phoenix, Arizona 85007  
Attorney for the State

[Signature]