

1 BEFORE THE BOARD OF MEDICAL EXAMINERS

2 IN THE STATE OF ARIZONA

3
4 In the Matter of

5 **DANIEL HOEHLE DOWNS, M.D.**

6 Holder of License No. **23384**
7 For the Practice of Medicine
8 In the State of Arizona.

CASE NO. MD-00-0154

Investigation No. 13587

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

(Letter of Reprimand)

9
10 **INTRODUCTION**

11 This matter was considered by the Arizona Board of Medical Examiners
12 ("Board") at its public meeting on February 14, 2001. Daniel H. Downs, M.D.,
13 appeared before the Board without legal counsel, for the purpose of the Board
14 conducting a formal interview, pursuant to the authority vested in the Board by A.R.S.
15 § 32-1451(G). After due consideration of the facts and law applicable to this matter,
16 the Board voted to issue the following findings of fact, conclusions of law and order.

17 **FINDINGS OF FACT**

- 18 1. The Board is the duly constituted authority for the regulation and control
19 of the practice of allopathic medicine in the State of Arizona.
- 20 2. Dr. Downs is the holder of License No. 23384 for the practice of
21 medicine in the State of Arizona.
- 22 3. Board Investigation No. 13587 was initiated after the Board was notified,
23 pursuant to a complaint from a 40-year-old female patient.
- 24 4. Investigation revealed that the patient presented to Dr. Downs on
25 February 10, 1997, regarding a two centimeter sized lump underneath
her left ear. Dr. Downs examined the patient and noted the lump was

1 not causing any emergent problems and recommended continued
2 observation.

- 3 5. The patient returned on April 11, 1997, complaining that the lump had
4 grown in size. Dr. Downs diagnosed a mass within the parotid gland and
5 recommended surgical removal of the lesion. The risks and benefits,
6 including the possibility of nerve damage, were discussed.
- 7 6. On July 16, 1997, Dr. Downs attempted a left superficial parotidectomy.
8 During the procedure, he was unable to identify the facial nerve and
9 proceeded with a lumpectomy. The patient's facial nerve was damaged.
- 10 7. The patient underwent further corrective surgery on September 2, 1997,
11 which included repair of the facial nerve. The patient continued to suffer
12 from partial facial deformity and erratic eye closure.
- 13 8. Dr. Downs fell below the standard of care in failing to perform a needle
14 biopsy of the lump to prove it was benign prior to recommending
15 continued observation, in cutting the facial nerve during surgery, and in
16 choosing to perform a lumpectomy.

17 **CONCLUSIONS OF LAW**

- 18 1. The Board possesses jurisdiction over the subject matter hereof and
19 over Dr. Downs pursuant to A.R.S. § 32-1401 *et seq.*
- 20 2. The conduct and circumstances described above in paragraphs 3
21 through 8 constitute unprofessional conduct pursuant to A.R.S. § 32-
22 1401(25)(II) "Conduct that the Board determines is gross negligence,
23 repeated negligence or negligence resulting in harm to or death of a
24 patient."
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ORDER

Based on the foregoing Findings of Fact and Conclusions of Law,
IT IS HEREBY ORDERED that a letter of reprimand be issued to Dr. Downs for
delaying a work-up and biopsy, for a technical error in cutting the facial nerve, and an error
in judgment in deciding to perform a lumpectomy.

RIGHT TO PETITION FOR REVIEW

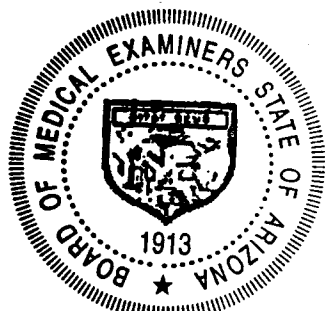
Dr. Downs is hereby notified that he has the right to petition for a rehearing.
Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing must be filed with
the Board's Executive Director within thirty (30) days after service of this Order and
pursuant to A.A.C. R4-16-102, it must set forth legally sufficient reasons for granting a
rehearing. Service of this Order is effective five (5) days after the date of mailing. If a
motion for rehearing is not filed, the Board's Order becomes effective thirty-five (35) days
after it is mailed to Dr. Downs.

Dr. Downs is further notified that the filing of a petition for rehearing is required to
preserve any rights of appeal to the Superior Court that he may wish to pursue.

DATED this 22nd day of March, 2001.

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

(SEAL)



By Claudia Foutz
CLAUDIA FOUTZ
Executive Director

ORIGINAL of the foregoing filed
this 22nd day of March, 2001, with:

The Arizona Board of Medical Examiners
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

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EXECUTED COPY of the foregoing mailed by
Certified Mail this 22nd day of MARCH, 2001, to:

Daniel H. Downs, M.D.
1300 North Rim Drive - Ste. B
Flagstaff, AZ 86001

COPY of the foregoing hand-delivered this
22nd day of MARCH, 2001, to:

Richard F. Albrecht, Esq.,
Assistant Attorney General
c/o Arizona Board of Medical Examiners
9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258
Counsel for the Board



Tamara Turner
Board Operations Coordinator