BEFORE THE BOARD OF MEDICAL EXAMINERS

IN THE STATE OF ARIZONA

In the Matter of **DAVID A. RAND, M.D.** Holder of License No. **8255** For the Practice of Medicine In the State of Arizona.	Board Case No. MD-01-0209 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** (Probation)

This matter was considered by the Arizona Board of Medical Examiners ("Board") at its public meeting on February 7, 2002. David A. Rand, M.D., ("Respondent") appeared before the Board without legal counsel for a formal interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(I). After due consideration of the facts and law applicable to this matter, the Board voted to issue the following findings of fact, conclusions of law and order.

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 No. 8255 for the practice of medicine in the State of Arizona.

3. The Board initiated case number MD-01-0209 after receiving notification from John C. Lincoln Hospital ("John C. Lincoln") that Respondent's privileges to manage diaphyseal femur fractures had been suspended. The Board investigated Respondent's management of diaphyseal femur fractures in three male patients during a five-month period in 2000.

4. The Board's Medical Consultant ("Medical Consultant") testified that he reviewed the three cases. The first case involved a 17 year-old male ("Patient 1"). According to the Medical Consultant, Respondent spent three and one-half hours trying to rod the case before inserting plates and screws. The second case involved a 15 year-old male ("Patient 2") and in a three hour and thirty-five minute procedure Respondent again was unable to pass the rod. The third case involved a 22 year-old male ("Patient 3"). Respondent was able to get a rod down in Patient 3, but Patient 3 later fractured proximally.

5. Respondent indicated that he had been practicing orthopedics for thirty years and probably began doing intramedullary rodding ("IM") in his residency, which completed in 1971. Respondent indicated that at that time the technique was mainly open rodding and the attempted roddings in the three cases at issue were closed roddings, which he has been performing for many years and he has done many cases using the closed rodding technique. Respondent could not say for sure if he had taken courses before starting to do closed roddings, but that he believes he must have. Respondent indicated he had taken an all-day course in IM rodding in the past.

7. In the case of Patient 1, Respondent indicated that Patient 1 was a husky football player and that one of the problems encountered in IM rodding is when positioning the patient on the operating table, in getting enough adduction of the involved hip. Respondent indicated he was using a Zimmer rod doing the technique and, with such a rod, he wanted to get as lateral as he could in the fulcrum. According to Respondent he was able to get all the flexible reamers and flexible tubings down the leg and had the fracture reduced, but because of the rigidity of the rod and because he could not get enough adduction of Patient 1's leg, he could not pass the rod down. The rod kept going medially.

8. Respondent was asked why, if he was able to get the flexible reamers and the guidepin through, he was unable to get the rod through. Respondent noted that the reamers are very flexible, whereas the rod is rigid and because he could not get enough adduction of the leg he could not get a line of the rod into the bone, it kept hitting the medial cortex. According to Respondent, the problem was not that he could not manipulate the fracture for the rod to go through, but that he could not even get the rod down to the fracture site because of the rigidity of the rod and the lack of adduction. In response to a query as to whether it was possible that the point of entry was wrong, Respondent noted that it was possible that the point of entry was wrong.

9. In the case of Patient 2, Respondent indicated he had the same problem he had with Patient 1 and he wanted to go to a retrograde rod, however, Patient 2 had an open epiphysis and Respondent did not want to go through that. Respondent was queried as to why he started off trying proximally and what was the problem in doing so in a fifteen year-old. Respondent noted that he could not get enough adduction to get the rod in. In response to a query as to whether it was possible that the point of entry was wrong, Respondent again noted that it was possible that the point of entry was wrong and that he might have been a little too lateral for this rod and that is why he kept going toward the medial cortex.

10. In the case of Patient 3, Respondent noted that he was able to get the rod down, but postoperatively Patient 3 fell down a flight of stairs and fractured from the trochanter down to the fracture sight. Respondent was asked as to why he believed Patient 3 fractured at that site and if Respondent believed Patient 3 had a weak point. Respondent indicated that it could have been a weak point, but even with a weak point Respondent believed that if Patient 3 had not fallen down the stairs he probably would have been okay. Respondent stated that he had seen comminuted fractures where there

is a weak point and without further trauma they heal. Respondent indicated he has stopped using this type of rod.

11. Respondent testified that he has not done rodding of femoral fractures since John C. Lincoln suspended his privileges to manage diaphyseal femur fractures. Respondent indicated that before the three cases at issue he did not have any problems performing IM rodding of femurs.

12. Respondent was asked whether he believed it was good practice to try to rod Patient 1 for three and one-half hours before deciding to open up and put a plate and screws in. Respondent indicated that IM rodding can take several hours and that the reason he stopped and decided to do a plate was because he felt the time was getting too long and Patient 1 was not being served the best by continuing to try to insert the rod, so he decided to stop the IM rod and do a plate. The plate procedure was successful.

13. The Medical Consultant testified that he believed an IM rodding could be completed in approximately an hour to an hour and one-half.

14. Respondent's point of entry in each case was wrong and Respondent should have recognized this.

CONCLUSIONS OF LAW

1. The Board of Medical Examiners of the State of Arizona possesses jurisdiction over the subject matter hereof and over Respondent.

2. The Board has received substantial evidence supporting the Findings of Fact described above and said findings constitute unprofessional conduct or other grounds for the Board to take disciplinary action.

3. The conduct and circumstances above in paragraphs 8, 9, 10 and 14 constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(q) "[a]ny conduct or

practice which is or might be harmful or dangerous to the health of the patient or the public."

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that:

1. Respondent is placed on Probation for fifteen years with the following terms and conditions:

(a) Respondent shall not perform any closed IM rodding of femur fractures until he demonstrates to the Board that he has had remedial training and the Board affirmatively approves Respondent's return to such practice.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or review 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 or review. Service of this order is effective five (5) days after date of mailing. If a motion 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 this 2nd day of May, 2002.

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

By Claudia Foutz
CLAUDIA FOUTZ
Executive Director

ORIGINAL of the foregoing filed this
3rd day of MAY, 2002 with:

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

Executed copy of the foregoing
mailed by U.S. Certified Mail this
3rd day of MAY, 2002, to:

David A. Rand, M.D.
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Copy of the foregoing hand-delivered this
3rd day of MAY, 2002, to:

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