

1 BEFORE THE BOARD OF MEDICAL EXAMINERS

2 IN THE STATE OF ARIZONA

3 In the Matter of

4 **BERNARD SHOSTACK, M.D.**

5 Holder of License No. 10176
6 For the Practice of Medicine
7 In the State of Arizona.

Case No. MD-01-0140

**CONSENT AGREEMENT FOR A
LETTER OF REPRIMAND**

8 **CONSENT AGREEMENT**

9 By mutual agreement and understanding, between the Arizona Board of Medical
10 Examiners ("Board") and Bernard Shostack, M.D. ("Respondent"), the parties agreed to
11 the following disposition of this matter at the Board's public meeting on February 6-7,
12 2002.

13 1. Respondent acknowledges that he has read and understands this Consent
14 Agreement and the stipulated Findings of Fact, Conclusions of Law and Order.
15 Respondent acknowledges that he understands he has the right to consult with legal
16 counsel regarding this matter and has done so or chooses not to do so.

17 2. Respondent understands that by entering into this Consent Agreement for
18 the issuance of the foregoing Order, he voluntarily relinquishes any rights to a hearing or
19 judicial review in state or federal court on the matters alleged, or to challenge this Consent
20 Agreement and the Order in its entirety as issued by the Board, and waives any other
21 cause of action related thereto or arising from said Order.

22 3. Respondent acknowledges and understands that this Consent Agreement
23 and the Order will not become effective until approved by the Board and signed by its
24 Executive Director.

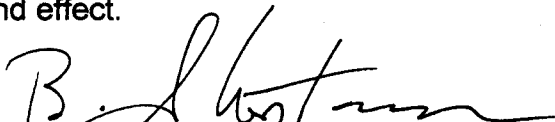
25 4. All admissions made by Respondent are solely for final disposition of this
matter and any subsequent related administrative proceedings or civil litigation involving

1 the Board and Respondent. Therefore, said admissions by Respondent are not intended
2 or made for any other use, such as in the context of another state or federal government
3 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
4 any other state or federal court.

5 5. Respondent acknowledges and agrees that, although the Consent
6 Agreement has not yet been accepted by the Board and issued by the Executive Director,
7 upon signing this agreement, and returning this document (or a copy thereof) to the
8 Board's Executive Director, Respondent may not revoke his acceptance of the Consent
9 Agreement and Order. Respondent may not make any modifications to the document.
10 Any modifications to this original document are ineffective and void unless mutually
11 approved by the parties.

12 6. Respondent further understands that this Consent Agreement and Order,
13 once approved and signed, shall constitute a public record document that may be publicly
14 disseminated as a formal action of the Board.

15 7. If any part of the Consent Agreement and Order is later declared void or
16 otherwise unenforceable, the remainder of the Order in its entirety shall remain in force
17 and effect.

18 
19 Bernard Shostack, M.D.

Reviewed and accepted this 29th
day of Jan, 2002.

FINDINGS OF FACT

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

5 2. Respondent is the holder of license number 10176 for the practice of
6 allopathic medicine in the State of Arizona.

7 3. The Board initiated case number MD-01-0140 upon receiving notification of a
8 malpractice settlement.

9 4. In August 1995, Respondent first saw patient D.E., a forty-year old male with
10 a history of bipolar disorder and hypothyroidism. Patient D.E. complained of an episode of
11 profuse sweating, nausea, and vomiting. At the time of the visit, patient D.E. was taking
12 Lithium and thyroid medication.

13 5. Respondent examined patient D.E. and noted blood work. The test showed
14 a borderline-high BUN and a slightly elevated creatinine, indicating renal problems.
15 Respondent did not follow-up on the abnormal tests. Respondent continued to treat
16 patient D.E. until 1998.

17 6. On March 13, 1998, Respondent examined, noted hand tremors, and
18 ordered blood work to check thyroid and Lithium levels. The blood work revealed elevated
19 levels of BUN, creatinine, cholesterol, triglycerides, WBC, and Lithium. Respondent
20 instructed patient D.E. to discontinue Lithium for one week and return for additional blood
21 work in a week.

22 7. On March 25, 1998, blood work indicated a lower Lithium level, but elevated
23 kidney function test. Although Respondent noted the elevated kidney function, he did not
24 follow-up on the test results.
25

1 8. On December 21, 1998, patient D.E. presented for his regular check-up.
2 Respondent obtained blood work and referred patient D.E. to a nephrologist for a review of
3 the March 25, 1998 elevated kidney function tests.

4 9. After conducting a physical examination and reviewing previous records, the
5 nephrologist noted chronic renal insufficiency and that the insufficient etiology unclear at
6 least five years in duration, based upon the 1995 lab work. The nephrologist further
7 indicated that patient D.E. would most likely have to undergo some type of dialysis.

8 10. On February 16, 2001, the Board initiated a malpractice investigation. From
9 February 2001 until August 2001, Respondent failed to respond to Board Staff's request
10 for a narrative response and records. After the Board issued an Order to Appear for an
11 Investigational Interview, Respondent, on September 24, 2001, submitted the requested
12 information.

13 11. Rudolf Kirschner, M.D., Board Medical Consultant, reviewed the case. Dr.
14 Kirschner concluded that Respondent's failure to follow-up on the elevated BUN/creatinine
15 and his failure to refer patient D.E. to a nephrologist sooner than three years fell outside
16 the acceptable standard of care.

17 12. Respondent's delay in follow-up and referral fall below the standard of care.

18 **CONCLUSIONS OF LAW**

19 1. The Board possesses jurisdiction over the subject matter hereof and over
20 Respondent.

21 2. The conduct and circumstances described above in paragraphs 5 to 9 and
22 11 constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(q)("[a]ny conduct
23 or practice which is or might be harmful or dangerous to the health of the patient or the
24 public.")

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1 3. The conduct and circumstances described above in paragraphs 5 to 9 and
2 11 constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(ll)("[c]onduct that
3 the board determines is gross negligence, repeated negligence or negligence resulting in
4 harm to the or the death of the patient.")

5 4. The conduct and circumstances described above in paragraph 10 constitute
6 unprofessional conduct pursuant to A.R.S. § 32-1401(25)(dd)("[f]ailing to furnish
7 information in a timely manner to the board or its investigators or representatives if legally
8 requested by the board.")

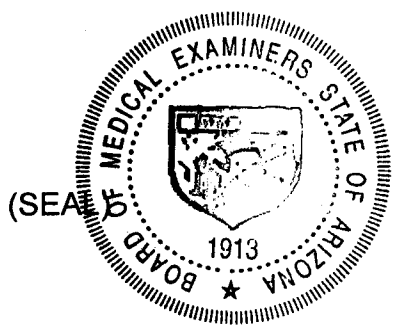
9 **ORDER**

10 IT IS HEREBY ORDERED THAT:

11 1. Respondent is issued a Letter of Reprimand for failing follow-up and to timely
12 refer a patient with abnormal renal function tests.

13 2. This Order is the final disposition of case number MD-01-0140.

14
15 DATED AND EFFECTIVE this 7th day of February, 2002.



BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

By Claudia Foutz
CLAUDIA FOUTZ, Executive Director
TOM ADAMS, Deputy Director

23 ORIGINAL of the foregoing filed this
7th day of FEBRUARY, 2002 with:

24 The Arizona Board of Medical Examiners
25 9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

1 EXECUTED COPY of the foregoing mailed by
2 Certified Mail this 7th day of FEBRUARY, 2002 to:

3 Bernard Shostack, M.D.
4 7550 N. 19th Ave., Ste. 202
5 Phoenix, AZ 85021-7976

6 EXECUTED COPY of the foregoing
7 hand-delivered this 7th day of
8 FEBRUARY, 2002, to:

9 Christine Cassetta, Assistant Attorney General
10 XXXXXXXXXX Management Analyst
11 Lynda Mottram, Compliance Officer
12 Lisa Maxie-Mullins, Legal Coordinator (Investigation File)
13 c/o Arizona Board of Medical Examiners
14 9545 E. Doubletree Ranch Road
15 Scottsdale, AZ 85258

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