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BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

STUART MEDOFF, M.D.

Holder of License No. **12154**
For the Practice of Medicine
In the State of Arizona.

Board Case No. MD-01-0105

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

(Letter of Reprimand and Probation)

On September 4, 2002 Stuart Medoff, M.D., ("Respondent") appeared before a Review Committee ("Review Committee") of the Arizona Medical Board ("Board") with legal counsel Donald A. Smith for a formal interview pursuant to the authority vested in the Review Committee by A.R.S. § 32-1451(P). The matter was referred to the Board for consideration at its public meeting on December 4, 2002. 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. 12154 for the practice of allopathic medicine in the State of Arizona.
3. The Board initiated case number MD-01-0105 after being notified of a malpractice settlement regarding Respondent's care and treatment of a 66 year-old female patient ("E.M."). E.M. first presented to Scottsdale Memorial Healthcare ("Healthcare") on January 31, 1996 and was seen by a Physician Assistant ("PA"). E.M. reported a cough of 4 days duration, three days with a temperature of 104, lack of appetite, pain in the lower chest and severe diarrhea that morning. E.M.'s temperature at

1 the visit was 99.7 and her vital signs were normal. An x-ray revealed an extremely large
2 consolidated area of infiltrate in the lower half of E.M.'s left lung and more "fluffy" infiltrate
3 in the upper lobe. PA diagnosed probable pneumonitis and consulted with another
4 physician who confirmed the diagnosis and stated that E.M. could go home. E.M. was
5 given prescriptions for Biaxin and Phenergan with Codeine. E.M. was instructed to return
6 to Healthcare in two days for follow-up.

7 4. E.M. returned to Healthcare on February 2, 1996 and was again examined
8 by PA. E.M. noted bilateral pedal edema, but no rash or itching. PA asked Respondent
9 to evaluate E.M. and he performed a brief examination, noting a normal examination with
10 the exception of decreased breath sounds in E.M.'s left lung. Respondent diagnosed a
11 large left lung infiltrate of uncertain etiology. E.M. was instructed to continue on the
12 prescribed course of medication and to return on February 7.

13 5. On February 5, E.M.'s husband called Respondent's office and reported
14 that E.M. was having diarrhea, was weak and had a temperature of 101. E.M. presented
15 to Respondent's office and was initially seen by PA. E.M.'s heart rate was noted as
16 tachycardic. A repeat x-ray was taken that indicated infiltrate in the right upper lung and
17 persistent infiltrate in most of E.M.'s left lung. PA diagnosed bilateral pneumonitis.
18 Respondent consulted with a pulmonologist and made plans to have E.M. go to
19 Healthcare's emergency room to meet the pulmonologist. E.M. was admitted to
20 Healthcare by the pulmonologist. On February 17, 1996, E.M. died of pneumococcal
21 pneumonia, multi-system organ dysfunction, sepsis and acute respiratory distress.

22 6. At the formal interview Respondent stated that he, the other physician, and
23 PA were all employed by Healthcare and that he and the other physician were registered
24 with the Arizona Regulatory Board of Physician Assistants as PA's supervising physician
25 and supervising agent. Respondent stated that he would see a patient if PA wanted

1 another opinion or had questions regarding a problem PA was not familiar with.
2 Respondent stated that the February 2 visit was his first contact with E.M. and on that
3 date he did not have access to the notes from the January 31 visit to Healthcare because
4 the notes were not transcribed until February 2. Respondent stated that PA was present
5 at the visit and did give him some background on E.M.

6 7. The Board read PA's February 2 note to Respondent. The note stated that
7 "[Respondent] briefly examined the patient today. He specifically looked for lymph nodes
8 around the cervical and supraclavicular area but did not detect any." Respondent was
9 asked for his recollection of his February 2 examination of E.M. Respondent stated that
10 his recollection was not too different. According to Respondent, PA asked him to see
11 E.M. in follow-up and since PA was obviously concerned, he decided to walk over and
12 examine E.M. Respondent stated that he wanted to assess E.M. to see how she looked
13 and to see if she was in respiratory distress or was pale or diaphoretic. Respondent
14 stated that he essentially got the idea that there had been little or no change in E.M.'s
15 condition, that she possibly looked a little better and that, although the vital signs
16 indicated she could be in some distress, when he examined her he could feel her pulse
17 and could feel whether she was using accessory muscles to breathe. Respondent stated
18 that to the best of his ability he believed there was no change and that E.M. could still be
19 treated as an outpatient. Respondent acknowledged that he did not document any of his
20 examination.

21 8. Respondent was asked to state his criteria for admitting a patient with
22 community-acquired pneumonia. Respondent stated that he would assess whether a
23 patient had a higher fever, an elevated white count, rapid breathing, whether the patient
24 looked ill, if the family stated the patient was not keeping fluids down at home, and if the
25

1 patient was not eating. Respondent stated that he would consider any number of things,
2 including what the patient said regarding how he/she felt.

3 9. Respondent agreed that it was the community standard to place a patient
4 with community-acquired pneumonia who has no other co-morbidities and no other risk
5 factors on a macrolide as an outpatient. Respondent was asked that if the patient then
6 returns two days later, is documented as breathing rapidly and as having a rapid pulse, is
7 it not time to reconsider the course of action. Respondent stated that it was, and that
8 was why he examined E.M. Respondent acknowledged that he did not repeat the chest
9 x-ray at this point. Respondent agreed that two days earlier E.M.'s pulse oximetry was
10 marginal and not normal. Respondent was asked if he assessed E.M.'s pulse oximetry
11 on February 2 to see if it was better. Respondent stated that he could not check the
12 pulse oximetry in his office and would have had to send E.M. to the hospital and he did
13 not think it was necessary. Respondent acknowledged that there was a noticeable
14 difference in E.M. from the February 2 visit to the February 5 visit in that E.M. was clearly
15 ill when she walked into the room, she was breathing rapidly, her color was pale and she
16 was probably diaphoretic.

17 10. Respondent's February 2, 1996 evaluation of E.M. was cursory. The
18 standard of care required Respondent to conduct a more thorough examination of E.M.
19 and document her pulmonary examination, her respiratory status, her current symptoms,
20 and whether she felt better or worse. The standard of care also required Respondent to
21 review E.M.'s x-ray and if it was unavailable, to order another x-ray because the x-ray
22 was critical to the decision making in regard to E.M.'s treatment.

23 11. Respondent's treatment of E.M. was unreasonable under the
24 circumstances because, given the standard of care, Respondent was required to conduct
25 a more thorough evaluation of E.M. including documenting her pulmonary examination,

1 her respiratory status, her current symptoms, and whether she felt better or worse.
2 Respondent was also required to review E.M.'s x-ray and if it was unavailable, to order
3 another x-ray. It was also unreasonable not to admit E.M. to the hospital given that she
4 met Respondent's articulated criteria for hospitalization.

5 12. Respondent's supervision of PA was not sufficient because he did not
6 appropriately direct PA when PA sought assistance in dealing with E.M. For instance, PA
7 was not instructed to find and/or repeat the x-ray.

8 13. E.M. was harmed because Respondent's actions resulted in delayed
9 hospitalization and treatment and E.M. eventually expired.

10 CONCLUSIONS OF LAW

11 1. The Arizona Medical Board possesses jurisdiction over the subject matter
12 hereof and over Respondent.

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

16 3. The conduct and circumstances above in paragraphs 2, 7, and 9 through 13
17 constitutes unprofessional conduct pursuant to A.R.S. § § 32-1401(24)(q) ("[a]ny conduct
18 or practice that is or might be harmful or dangerous to the health of the patient or the
19 public;" and 32-1401(24)(ii) ("[I]ack of inappropriate direction, collaboration or direct
20 supervision of a licensedhealth care provider employed by, supervised by or
21 assigned to the physician.")

1 **ORDER**

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

3 IT IS HEREBY ORDERED that:

4 1. Respondent is issued a Letter of Reprimand for failure to meet the standard
5 of care in his cursory examination of a patient with community-acquired pneumonia, for
6 inadequate supervision of a physician assistant and for failure to document his
7 examination.

8 2. Respondent is placed on Probation for one year with the following terms
9 and conditions:

10 (a) Respondent shall within one year of the effective date of this Order, obtain
11 10 hours of Board Staff pre-approved Category I Continuing Medical Education (CME) in
12 community-acquired pneumonia and 10 hours of Board staff pre-approved Category I
13 CME in record keeping. Respondent is to provide Board Staff with satisfactory proof of
14 attendance. The CME hours shall be in addition to the hours required for biennial
15 renewal of Respondent's medical license.

16 (b) Respondent shall pay the costs associated with monitoring his probation as
17 designated by the Board each and every year of probation. Such costs may be adjusted
18 on an annual basis. Costs are payable to the Board no later than 60 days after the
19 effective date of this Order and thereafter on an annual basis. Failure to pay these costs
20 within 30 days of the due date constitutes a violation of probation.

21 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

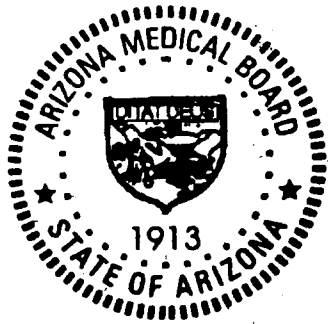
22 Respondent is hereby notified that he has the right to petition for a rehearing or
23 review. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or
24 review must be filed with the Board's Executive Director within thirty (30) days after
25 service of this Order and pursuant to A.A.C. R4-16-102, it must set forth legally sufficient

1 reasons for granting a rehearing or review. Service of this order is effective five (5) days
2 after date of mailing. If a motion for rehearing or review is not filed, the Board's Order
3 becomes effective thirty-five (35) days after it is mailed to Respondent.

4 Respondent is further notified that the filing of a motion for rehearing or review is
5 required to preserve any rights of appeal to the Superior Court.

6 DATED this 4th day of December, 2002.

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8 THE ARIZONA MEDICAL BOARD



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By *Barry A. Cassidy*
BARRY A. CASSIDY, Ph.D., PA-C
Executive Director

14 ORIGINAL of the foregoing filed this
15 5th day of December, 2002 with:

16 Arizona Medical Board
17 9545 East Doubletree Ranch Road
18 Scottsdale, Arizona 85258

19 Executed copy of the foregoing
20 mailed by U.S. Certified Mail this
21 5th day of December, 2002, to:

22 Donald H. Smith
23 Snell & Wilmer, LLP
24 400 E. Van Buren
25 Phoenix, AZ 85004-0001

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Executed copy of the foregoing
mailed by U.S. Mail this
5th day of December, 2002, to:

Stuart Medoff, M.D.
9828 E Windrose Dr
Scottsdale AZ 85260-4615

Copy of the foregoing hand-delivered this
5th day of December, 2002, to:

Christine Cassetta
Assistant Attorney General
Sandra Waitt, Management Analyst
Investigations (Investigation File)
Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

