

1 BEFORE THE BOARD OF MEDICAL EXAMINERS

2 IN THE STATE OF ARIZONA

3 In the Matter of

4 **JEROME ROTHBAUM, M.D.**

5 Holder of License No. 4392
6 For the Practice of Medicine
7 In the State of Arizona.

Board Case No. MD-01-0450

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

(Letter of Reprimand & Probation)

8 On April 11, 2002, Jerome Rothbaum, M.D., ("Respondent") appeared before a
9 Review Committee ("Review Committee") of the Arizona Board of Medical Examiners
10 ("Board") with legal counsel, Michael Smith, for a formal interview pursuant to the
11 authority vested in the Review Committee by A.R.S. § 32-1451(Q). The matter was
12 referred to the Board for consideration at its public meeting on June 5, 2002. After due
13 consideration of the facts and law applicable to this matter, the Board voted to issue the
14 following findings of fact, conclusions of law and order.

15 **FINDINGS OF FACT**

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

19 2. Respondent is the holder of License No. 4392 for the practice of medicine
20 in the State of Arizona.

21 3. The Board initiated case number MD-01-0450 after receiving notification of
22 a malpractice settlement involving Respondent's care and treatment of a 49 year-old
23 male patient ("Patient") who was treated sporadically by Respondent between 1989 and
24 1998, but primarily between 1994 and 1998.

25 4. Patient was overweight and had high blood pressure. In 1994, laboratory
studies revealed elevated cholesterol and triglycerides. A copy of the laboratory report

1 was faxed to Patient, but there was no discussion between Respondent and Patient
2 regarding the abnormal values, the hypertension, stress management, weight control or
3 exercise and diet. Patient returned to Respondent in February 1996, May 1997 and July
4 1997 for varying complaints. Respondent ordered laboratory studies during the May
5 1997 visit. Again, the results were faxed to Patient. Respondent had no further visits
6 with Patient.

7 5. Patient expired on September 25, 1998. Autopsy results indicated Patient
8 expired from myocardial infraction due to extensive high-grade stenosis of all four
9 coronary arteries.

10 6. During the two-year period Patient was under Respondent's care there
11 were no documented blood pressure checks and Respondent did not document his
12 continued prescribing of blood pressure medication. The Patient received a prescription
13 as late as August 28, 1998, but Respondent had not seen Patient for over 13 months.
14 The investigation revealed that Respondent was aware that Patient showed a 5-year
15 period of elevated cholesterol and triglycerides along with hypertension and weight
16 problems – all indicative of a possible cardiac related illness.

17 7. The Board's Medical Consultant ("Medical Consultant") testified that his
18 concern was that Patient was not treated with the appropriate level of aggressiveness
19 and that, even though Patient was uncooperative and would not make a lifestyle change,
20 Respondent continued to recommend a lifestyle change and did not resort to a
21 pharmacologic treatment for Patient's lipid disorder. The Medical Consultant also voiced
22 concern that Respondent renewed prescriptions without much office follow-up and that
23 there was very little documentation of discussions between Respondent and Patient.

24 8. During the formal interview it was noted that Patient was obese and had a
25 family history of cardiac disease, but was asymptomatic for cardiac disease. Respondent

1 testified that the basic approach he used in treating Patient was to try to get Patient to
2 lose weight and exercise more. Respondent explained that the reason why laboratory
3 results were often faxed to Patient and not reviewed in person was that Patient lived in
4 Sierra Vista and that by the time Respondent would get laboratory results, Patient would
5 be back in Sierra Vista. Respondent testified that, although not noted in his records, he
6 often told Patient that Patient had the capability to control what was happening and that
7 things were fairly simple in terms of lifestyle modification.

8 9. Respondent testified that Patient's blood pressure was checked every time
9 he was in the office. Respondent also noted that at one time he asked Patient to have
10 some recordings made of his blood pressure and return within six months. Patient did
11 not return for two years. Respondent noted that there was a substantial lack of
12 compliance with Respondent's instructions by Patient.

13 10. Respondent was queried as to why with Patient's triglycerides of 965 and
14 Patient not making lifestyle changes Respondent did not consider pharmacologic
15 therapy. Respondent noted that the values Patient had, during the time frame he treated
16 him, were not so out of line to necessitate pharmacologic therapy and that he believed
17 Patient could do something about his condition without substantial risk through exercise,
18 weight reduction, and dietary control.

19 11. Respondent was asked how common it was in his practice to find an obese
20 person who loses weight and modifies his lifestyle, particularly because lifestyle
21 modifications are not generally successful in obese patients. Respondent noted that
22 sometimes lifestyle modification is successful, sometimes not. Respondent noted that it
23 depends on the individual and whether he is willing to make the effort to make the
24 change.

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1 12. Respondent was queried as to why, with triglycerides of 666, a recognized
2 cardiac risk factor in 1997, he was passive about Patient's care and why there seemed to
3 be no follow-up. Respondent noted that one could argue whether he was being passive
4 or challenging Patient to do what was right for Patient. Respondent stated that he
5 believed that where the entire focus of medical care was going to is engage the patient
6 and have the patient take responsibility for their health.

7 13. Respondent was asked about his policy for refilling prescriptions at the time
8 of Patient's care. Respondent stated that anything dealing with narcotics or any
9 controlled substance went through him and there was a fair amount of latitude offered to
10 the nurses to refill if it seemed like a routine refill. Respondent stated that his policy in
11 general was that if things were stationary and a patient had not been seen for a year the
12 patient would be encouraged to come into the office. Respondent stated he did not know
13 why Patient was given refills.

14 14. In his treatment of Patient, Respondent fell below the standard of care.

15 **CONCLUSIONS OF LAW**

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

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

21 3. The conduct and circumstances above in paragraphs 4, 6, 7, 10, 12, 13,
22 and 14 constitutes unprofessional conduct pursuant to A.R.S. § § 32-1401(25)(e) "[f]ailing
23 or refusing to maintain adequate records on a patient;" 32-1401(25)(q) "[a]ny conduct or
24 practice that is or might be harmful or dangerous to the health of the patient or the
25

1 public;" 32-1401(25)(II) "[c]onduct that the board determines is gross negligence,
2 repeated negligence or negligence resulting in harm to or the death of a patient."

3 **ORDER**

4 Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS
5 HEREBY ORDERED that:

6 1) Respondent is issued a Letter of Reprimand for inadequate patient care
7 and inadequate record keeping.

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

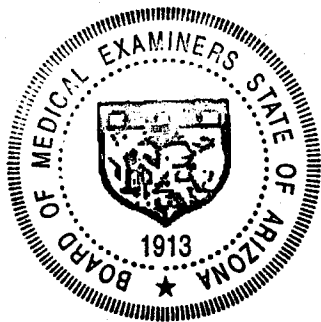
- 10 a) Board Staff or its agents will conduct a chart review of 20 charts within one
11 year of the effective date of this Order. Based upon the chart review, the
12 Board retains jurisdiction to take additional disciplinary or remedial action.

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

14 Respondent is hereby notified that he has the right to petition for a rehearing or
15 review. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or
16 review must be filed with the Board's Executive Director within thirty days after service of
17 this Order and pursuant to A.A.C. R4-16-102, it must set forth legally sufficient reasons
18 for granting a rehearing or review. Service of this order is effective five days after date of
19 mailing. If a motion for rehearing or review is not filed, the Board's Order becomes
20 effective thirty-five days after it is mailed to Respondent.

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

1 DATED this 5th day of June, 2002.



BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA

7 By Claudia Foutz
8 CLAUDIA FOUTZ
9 Executive Director

10 ORIGINAL of the foregoing filed this
11 6th day of June, 2002 with:

12 The Arizona Board of Medical Examiners
13 9545 East Doubletree Ranch Road
14 Scottsdale, Arizona 85258

15 Executed copy of the foregoing
16 mailed by U.S. Certified Mail this
17 6th day of June, 2002, to:

18 Michael Smith
19 Slutes, Sakrison & Hill P.C.
20 33 N Stone Ave Ste 1000
21 Tucson, Arizona 85701-1411

22 Executed copy of the foregoing
23 mailed by U.S. Mail this
24 6th day of June, 2002, to:

25 Jerome Rothbaum, M.D.
5240 E Knight Dr Ste 114
Tucson Arizona 85712-2122

1 Copy of the foregoing hand-delivered this
2 10th day of June, 2002, to:

3 Christine Cassetta
4 Assistant Attorney General
5 Sandra Waitt, Management Analyst
6 Lynda Mottram, Compliance Officer
7 Investigations (Investigation File)
8 Arizona Board of Medical Examiners
9 9545 East Doubletree Ranch Road
10 Scottsdale, Arizona 85258

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