BEFORE THE ARIZONA STATE BOARD
OF PODIATRY EXAMINERS

IN THE MATTER OF:

J. DAVID BROWN, DPM

Holder of License No. 0383
For the Practice of Podiatric Medicine
In the State of Arizona,

Respondent.

Case Nos. 09-02-C & 09-21-C

CONSENT AGREEMENT
AND ORDER

CONSENT AGREEMENT

RECITALS

In the interest of a prompt and judicious settlement of this case, consistent with the public
interest, statutory requirements and responsibilities of the Arizona Board of Podiatry Examiners
(Board), and under A.R.S. §32-801, et seq., and 41-1092.07(F)(5), J. David Brown, holder of
license number 0383 to practice podiatric medicine in the State of Arizona (Respondent), and the
Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order
(Consent Agreement) as the final disposition of this matter.

1. Respondent has read and understands this Consent Agreement as set forth herein,
and has been provided the opportunity to discuss this Consent Agreement with an attorney.
Respondent voluntarily enters into this Consent Agreement for the purpose of avoiding the
expense and uncertainty of an administrative hearing.

2. Respondent understands that he has a right to a public administrative hearing
concerning the above-captioned matter, at which administrative hearing he could present
evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent
knowingly and voluntarily relinquishes all rights to such an administrative hearing, as well as all
rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative
and/or judicial action, concerning the matters set forth herein. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

3. Respondent understands that this Consent Agreement or any part of the Agreement may be considered in any future disciplinary action by the Board against him.

4. Respondent understands that acceptance of this Consent Agreement does not preclude any other agency, subdivision or officer of this State from instituting any other civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

5. Respondent understands that this Consent Agreement deals with Board complaint case numbers 09-02-C and 09-21-C involving allegations of unprofessional conduct against Respondent. The investigation into these cases against Respondent shall be concluded upon the Board’s adoption of this Consent Agreement.

6. Any admissions made by Respondent in this Consent Agreement are made solely for the final disposition of this matter, and any related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, any admissions made by Respondent in this Consent Agreement are not intended for any other use, such as the context of another regulatory agency’s proceedings, whether in the State of Arizona or in any other state or federal court.

7. Respondent acknowledges and agrees that, upon signing this Consent Agreement and returning this document to the Board’s Executive Director, or Counsel for the State, Respondent may not revoke his acceptance of the Consent Agreement or make any modifications to the document, regardless of whether the Consent Agreement has been issued by the Board’s President. Any modification to this original document is ineffective and void unless mutually approved by the parties in writing.

8. Respondent understands that the foregoing Consent Agreement shall not become effective unless and until adopted by the Board and signed by its President or the Executive Director on behalf of the President.
9. Respondent understands and agrees that if the Board does not adopt this Consent Agreement, he will not assert as a defense that the Board’s consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

10. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board, and may be reported if required by law to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

11. Respondent understands that any violation of the Consent Agreement constitutes unprofessional conduct under A.R.S §32-841.01(21), (violating any formal order, probation or stipulation of the Board), and may result in disciplinary action under A.R.S. §32-852.01.

DATED: 12/16/14

SIGNED: ____________________________

J. David Brown, DPM

APPROVED AS TO FORM:

Bruce Crawford
Attorney for Respondent

FINDINGS OF FACT

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

2. Respondent holds license number 0383 issued by the Board to practice podiatric medicine in the State of Arizona which is valid through June 30, 2015.

Case No. 09-02-C

3. On May 13, 2008 patient W.B. was evaluated by Respondent for right foot pain. Respondent diagnosed a degenerative first metatarsal-cuneiform joint.

4. On May 30, 2008 Respondent performed surgery on W.B. which included fusion of the first metatarsal-cuneiform joint using “os” staples (an arthrodesis procedure). Respondent
also noted at that time that the bone was in “poor condition” and de-mineralized bone graft material was used along with the internal fixation.

5. The patient had his first post-operative check with respondent on June 5, 2008. X-rays were taken that date. Concerns were raised by the Board related to whether the x-rays showed proper fixation.

6. The patient’s next follow-up visit was on June 12, 2008. The patient reported he had “stumbled” on the right foot. X-rays were again taken on this date. Concerns were raised by the Board related to whether the x-rays showed proper fixation.

7. After additional conservative care from Respondent, including physical therapy, oral steroids, and custom orthotics, the patient elected to seek a second opinion and Respondent referred him to Kerry Zang, DPM. Dr. Zang diagnosed a failed arthrodesis of the first metatarsal-cuneiform joint and degeneration of the second metatarsal-cuneiform joint.

8. The patient required additional surgical procedures to correct and treat his foot pain. Those procedures were performed by Dr. Zang and his associate Shahram Askari, DPM.

9. The procedure performed on the patient by the Respondent ultimately resulted in a non-union/failed arthrodesis.

10. In the post-operative course, Respondent did not treat the affected areas of the foot via rigid immobilization and complete non-weight bearing.

11. Instead, respondent prescribed oral steroids and physical therapy for this patient’s condition.

Case No. 09-21-C

12. On September 7, 2007, Respondent performed the following surgical procedure on patient M.P.: Left hallux valgus correction, left 2nd toe hammertoe correction, left 2nd metatarsal joint capsulotomy, and insertion of pump device. The hammertoe correction of the second toe was completed using Kirschner wire fixation.
13. In the days following surgery, M.P.'s second toe was noted to be becoming dark in color which was determined to be caused by lack of circulation in the toe. Respondent treated the patient with antibiotics and Nitro-Bid ointment to try to improve the circulation. Respondent did not refer the patient for a vascular consultation, but did refer her to another podiatrist after approximately two (2) weeks post-operatively.

14. Concerns were raised by the Board related to whether the Kirschner wire was properly placed in the patient's second toe and whether it may have caused compromised circulation. The patient ultimately underwent extensive hyperbaric oxygen therapy to salvage the toe.

15. Following the surgery on September 7, 2007, Respondent provided the patient with a cam walker. Respondent's office improperly billed the patient's insurance for that device under code L2116, which resulted in a higher payment to Respondent than should have been made.

**CONCLUSIONS OF LAW**

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent pursuant to A.R.S. § 32-801 et seq.

2. If proven true, the conduct and circumstances in the Findings of Fact above may constitute grounds for disciplinary action against Respondent’s license according to A.R.S. §32-852(6), (that he is guilty of unprofessional conduct as defined in section 32-854.01), via A.R.S. §32-854.01(20), (any conduct or practice which is or might be harmful or dangerous to the health of the patient).

**ORDER**

Based upon the above Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED:**

1. Respondent is issued a Letter of Concern for his care and treatment of patients W.B. and M.P. as indicated above.
2. Respondent shall complete at least ten (10) hours of non-disciplinary continuing medical education, ("CME"), regarding varied techniques of fixation. These hours shall be in addition to the minimum CME hours required for annual license renewal.

2.a. The CME must be "hands-on" clinical experience.

2.b. A maximum of five (5) hours of the required CME may be completed via a preceptorship arrangement with another podiatrist licensed to practice in the state of Arizona. Under such an arrangement, Respondent must complete a minimum of six (6) surgical procedures involving varied techniques of fixation. Respondent may select more than one podiatrist preceptor. Respondent shall ensure that the podiatrist preceptor(s) provide a written statement to the Board regarding the surgical procedures completed and Respondent's competency thereof.

2.c. All CME requirements including clinical CME and the selection of podiatrist preceptor(s) must be pre-approved by the Board.

3. Respondent shall reimburse patient M.P.'s insurance company, and patient W.B.'s insurance company, for the cam walkers ordered for them and re-bill under the proper code. If reimbursement cannot be completed due to difficulties caused by the insurance company, Respondent shall demonstrate good faith efforts to accomplish the reimbursement process.

4. All Order requirements herein must be completed within six (6) months of the effective date of this agreement.

5. This Order becomes effective as of the date stated below.

DATED AND EFFECTIVE this 23rd day of December, 2014.

ARIZONA STATE BOARD
OF PODIATRY EXAMINERS

By: Barbara Campbell, DPM
Barbara Campbell, DPM
Board President
ORIGINAL of the foregoing filed this 30th day of December, 2014, with:
Arizona Board of Podiatry Examiners
1400 W. Washington St. #230
Phoenix, AZ 85007

COPY of the foregoing sent via US Mail this 30th day of December, 2014, to:
Bruce Crawford
1920 E. Southern Ave. #101
Tempe, AZ 85285
Attorney for Respondent.

John Tellier
Assistant Attorney General
1275 W. Washington, CIV/LES
Phoenix, Arizona 85007
Attorney for the State

BY:

Board Staff