

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**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

1 and/or judicial action, concerning the matters set forth herein. Respondent affirmatively agrees
2 that this Consent Agreement shall be irrevocable.

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

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

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

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

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

23 8. Respondent understands that the foregoing Consent Agreement shall not become
24 effective unless and until adopted by the Board and signed by its President or the Executive
25 Director on behalf of the President.

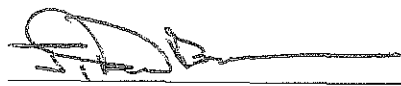
26

1 9. Respondent understands and agrees that if the Board does not adopt this Consent
2 Agreement, he will not assert as a defense that the Board's consideration of this Consent
3 Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

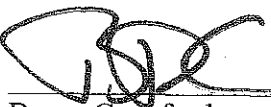
4 10. Respondent understands that this Consent Agreement is a public record that may be
5 publicly disseminated as a formal action of the Board, and may be reported if required by law to
6 the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

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

10
11 DATED: 12-16-14

SIGNED: 
J. David Brown, DPM

12
13 APPROVED AS TO FORM:


Bruce Crawford
Attorney for Respondent

14
15
16 **FINDINGS OF FACT**

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

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

21 **Case No. 09-02-C**

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

24 4. On May 30, 2008 Respondent performed surgery on W.B. which included fusion
25 of the first metatarsal-cuneiform joint using "os" staples (an arthrodesis procedure). Respondent
26

1 also noted at that time that the bone was in "poor condition" and de-mineralized bone graft
2 material was used along with the internal fixation.

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

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

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

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

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

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

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

21 Case No. 09-21-C

22 12. On September 7, 2007, Respondent performed the following surgical procedure
23 on patient M.P.: Left hallux valgus correction, left 2nd toe hammertoe correction, left 2nd
24 metatarsal joint capsulotomy, and insertion of pump device. The hammertoe correction of the
25 second toe was completed using Kirschner wire fixation.

26

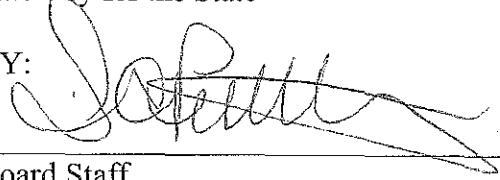
1 ORIGINAL of the foregoing filed this
2 30 day of Dec, 2014, with:

3 Arizona Board of Podiatry Examiners
4 1400 W. Washington St. #230
5 Phoenix, AZ 85007

6 COPY of the foregoing sent via US Mail this
7 30 day of Dec, 2014, to:

8 Bruce Crawford
9 1920 E. Southern Ave. #101
10 Tempe, AZ 85285
11 Attorney for Respondent.

12 John Tellier
13 Assistant Attorney General
14 1275 W. Washington, CIV/LES
15 Phoenix, Arizona 85007
16 Attorney for the State

17 BY: 
18 _____
19 Board Staff

20
21
22
23
24
25
26