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8 BEFORE THE BOARD OF PODIATRY EXAMINERS
9 OF THE STATE OF ARIZONA

10 IN THE MATTER OF:
11 **MICHAEL DERSHOWITZ, D.P.M.**
12 Holder of License Number 0154
For the Practice of Podiatry
13 In the State of Arizona,
14 Respondent.

Case No: 05-19-M
**CONSENT AGREEMENT
AND ORDER**

15 **CONSENT AGREEMENT**

16 **RECITALS**

17 In the interest of a prompt and judicious settlement of this case, consistent with the public
18 interest, statutory requirements and responsibilities of the Arizona State Board of Podiatry
19 Examiners ("Board"), and under A.R.S. §§ 32-801, *et seq.*, and 41-1092.07(F)(5), Michael
20 Dershowitz, holder of license number 0154 to practice podiatry in the State of Arizona
21 ("Respondent"), and the Board enter into the following Recitals, Findings of Fact, Conclusions
22 of Law and Order ("Consent Agreement") as the final disposition of this matter.

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

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

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

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

13 5. Respondent understands that this Consent Agreement deals with Board Complaint
14 No. 05-19-M involving allegations of unprofessional conduct against Respondent. The
15 investigation into this case against Respondent shall be concluded upon the Board's adoption of
16 this Consent Agreement.

17 6. Any admissions made by Respondent in this Consent Agreement are made solely
18 for the final disposition of this matter, and any related administrative proceedings or civil
19 litigation involving the Board and Respondent. Therefore, any admissions made by Respondent
20 in this Consent Agreement are not intended for any other use.

21 7. Respondent acknowledges and agrees that, upon signing this Consent Agreement
22 and returning this document to the Board's Executive Director, Respondent may not revoke his
23 acceptance of the Consent Agreement or make any modifications to the document, regardless of
24 whether the Consent Agreement has been issued by the Board's Chairman. Any modification to
25 this original document is ineffective and void unless mutually approved by the parties in writing.
26

8. Respondent understands that the foregoing Consent Agreement shall not become effective unless and until adopted by the Board and signed by its Chairman.

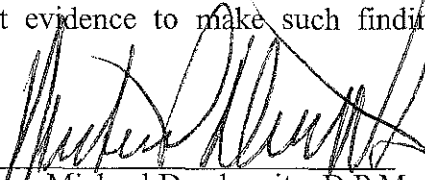
9. Respondent understands and agrees that if the Board does not adopt this Consent Agreement, he will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

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

11. Respondent understands that any violation of this Consent Agreement constitutes unethical professional conduct under A.R.S. § 32-854.01(21) and may be cause for additional discipline against your license.

12. Respondent neither admits nor denies the findings and conclusions below, however, acknowledges that the Board has sufficient evidence to make such findings and conclusions and agrees with the terms of the order.

DATED: 6/6/06

SIGNED: 
Michael Dershowitz, D.P.M.
Respondent

FINDINGS OF FACT

13. Respondent holds license no. 0154 to practice podiatry in the State of Arizona.

14. The Board is empowered to regulate the practice of podiatry in the State of Arizona pursuant to as 32-801, et seq.

15. On or about August 30, 2002, patient A.M. presented to Respondent for treatment following an ankle fracture and sprain that occurred on August 29, 2002.

16. Respondent examined A.M., diagnosed a fracture of the left fibula, applied a compression cast and recommended open reduction and internal fixation (ORIF) surgery.

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17. During his examination of A.M., Respondent reviewed x-rays taken of the injury on August 29, 2002. The x-rays revealed a high fracture of the fibula with widening of the medial ankle joint. This type of fracture is indicative of collateral damage to both the deltoid and syndesmotic ligaments. Respondent failed to conduct further diagnostic tests to confirm whether collateral damage was present.

18. Respondent performed the ORIF surgery on September 5, 2002. After the surgery A.M. complained of deformity of the ankle and continued pain. A.M. was further evaluated and found to have had damage to both the deltoid and syndesmotic ligaments, which were not recognized prior to the initial surgery and underwent subsequent surgeries.

19. Respondent failed to diagnose and repair the damage to the ligaments, which was below the standard of care. This failure led to Respondent performing an inaccurate and incomplete procedure (the ORIF surgery)

20. Further, during the surgery, Respondent used a plate that was too short and the fracture was malaligned. The standard of care required Respondent to both recognize and properly repair the fracture, the deltoid ligament and syndesmotic ligament. The improper repair led to additional surgeries and may possibly lead to other damage and deformities.

CONCLUSION OF LAW

21. The conduct and circumstances in the Findings of Fact, above, constitute grounds for disciplinary action according to A.R.S. § 32-854.01(20) (conduct which is or might be harmful or dangerous to the health of the patient) and, therefore, subject Respondent's license to disciplinary action.

ORDER

Based upon the foregoing Finding of Fact, Conclusion of Law above, the Board Orders that:

22. **PROBATION.** Respondent's license shall be placed on PROBATION for one (1) year from the effective date of this Order, subject to the following terms and conditions:

802 6.14.00
MB 6/14/6

1 A. On a monthly basis, beginning with the effective date of this Order,
2 Respondent shall provide to the Board complete records, including x-rays, billing and
3 any and all treatment records and notes, of all surgical procedures from the knee ~~and~~ mid-tarsal
4 joint performed by Respondent during the period of probation. The prior month's medical
5 records shall be received by the Board office on or before the fifth day of each month. This
6 review of records, charts, x-rays and billing documents shall only include surgical procedures
7 performed after the effective date of the Consent Agreement.

8
9 B. In addition to the continuing education required for license renewal,
10 Respondent shall obtain an additional 15 hours in continuing medical education by attending a
11 course in the area of treatment and diagnosis in repair of leg and ankle fractures.

12 23. **CIVIL PENALTY.** Respondent shall pay a CIVIL PENALTY in the amount of
13 \$1000.00 to the Board via cashier's check or money order.

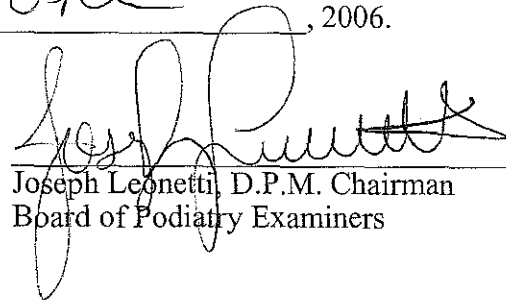
14 24. **COSTS.** Respondent shall be responsible for all costs associated with complying
15 with this Consent Agreement and Order.

16 25. **TERMINATION.** It shall be Respondent's affirmative duty to seek
17 termination of the probation ordered herein. Upon application by Respondent and in the sole
18 discretion of the Board, the Board may terminate the Respondent's probation prior to the one
19 year period ordered by this Consent Agreement and Order. However, the probation may be
20 extended or other enforcement action taken, after notice and an opportunity for hearing, in the
21 event that Respondent violates this Order or violates the Board's statutes and rules.

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1 26. **EFFECTIVE DATE.** The effective date of this Consent Agreement and Order is the
2 date it is signed by the Chair of the Board.

3 ORDERED this 14 day of June, 2006.

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5 
6 Joseph Leonetti, D.P.M. Chairman
7 Board of Podiatry Examiners

8 Original filed this 15th day of
9 June, 2006, with:

10 Arizona State Board of Podiatry Examiners
11 1400 W. Washington Ste. 230
12 Phoenix, Arizona 85007

13 COPY of the foregoing mailed by
14 certified mail no. 7005 1820 0002 8078 0231
15 and first class mail this 15th day of
16 June, 2006 to:

17 Dr. Michael Dershowitz, D.P.M.
18 1300 N. 12th Street Ste. 503
19 Phoenix, Arizona 85006

20 COPY of the foregoing mailed this
21 15 day of June, 2006 to:

22 Bruce Crawford, Esq.
23 Crawford & Kline, P.L.C.
24 1920 E. Southern Avenue, Suite 101
25 Tempe, Arizona 85282-7518
26 Counsel for Respondent

M. Elizabeth (Lisa) Burns
Assistant Attorney General
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Phoenix, Arizona 85007
Counsel for the State of Arizona

By: Linda A. Wells
MEM:yfl - #469133