BEFORE THE BOARD OF PODIATRY EXAMINERS

IN THE STATE OF ARIZONA

In the Matter of: **BRANDON KIM, D.P.M.** **Holder of License No. 0571** **For the Practice of Podiatry** **In the State of Arizona,** **Respondent.**	**Complaint No. 07-37-M** **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 State of Arizona Board of Podiatry Examiners (Board), and under A.R.S. §§ 32-801, *et seq.*, and 41-1092.07(F)(5), Brandon Kim, holder of license number 0571 to practice podiatry 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 No. 07-37-M involving allegations of unprofessional conduct against Respondent. The investigation into this case against Respondent shall be concluded upon the Board's adoption of this Consent Agreement.

6. All 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 in the context of another regulatory agency's proceedings, or civil or criminal 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, 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 Chairman. 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 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 unprofessional conduct under A.R.S. § 32-854.01(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: 7/17/08 SIGNED: _____
Brandon Kim, D.P.M.
Respondent

APPROVED AS TO FORM: _____
Edward M. Ladley
Attorney for Respondent

FINDINGS OF FACT

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

2. Respondent holds license no. 0571 to practice podiatry in the State of Arizona.

3. On or about February 11, 2004 patient C.D. presented to Respondent for a second opinion following an injury to her left ankle in November of 2003.

4. Respondent examined C.D., diagnosed her with at least a grade 2 ankle sprain and suspicion of an increased possibility of a 50% tear to a rupture of her ATFL. An ultrasound confirmed significant partial tearing of the ATFL. Fibrosis and synovitis were also noted.

5. On June 15, 2004, Respondent performed a modified Broström procedure and placed a Mitek anchor device in the fibula.

6. Respondent left practice in September of 2004 and the patient assumed treatment with Dr. Gorman.

7. Postoperative x-rays revealed a dislocated Mitek anchor.

8. The patient alleges that the surgery and misplaced anchor caused permanent injury to her left ankle.

CONCLUSIONS OF LAW

9. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-801, et seq.

10. The conduct and circumstances described in the Findings of Fact constitute a violation of A.R.S. § 32-854.01(20) (any conduct or practice that is or might be harmful or dangerous to the health of a patient).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Board issues the following Order:

11. **PROBATION.** Respondent's license shall be placed on probation for a period of one (1) year with the following terms and conditions:

a. The probationary period is in effect during the time in which the Respondent is actively practicing. During a period of non-practice, probation will be tolled and will not commence again until the period of non-practice is completed. Respondent shall notify the Board in writing of any period in which he is not practicing as a condition to the probation being tolled. If Licensee allows his license to expire, any new license granted to Licensee shall be subject to all terms of this Consent Agreement.

b. During probation, and **by the fifth (5th) day of each month,** Respondent shall **submit to the Board his complete patient charts, pre and post-operative x-rays, and billing** for all surgical cases specific for the procedures involving the Metatarsal-cuneiforms joints proximally through the subtalar joint. The Board shall audit those records to determine Respondent's compliance with applicable standards of care in the podiatric community and with required state statutes and rules.

12. **DECREE OF CENSURE.** Respondent shall receive a Decree of Censure against his license. This is a disciplinary action which will become a part of Respondent's file as a public record.

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

14. **EFFECTIVE DATE.** The effective date of this Order is the date it is signed by the Chair of the Board.

ORDERED this 14th day of August, 2008.

Dedrie Polakof DPM
Dedrie Polakof, D.P.M., Chairman
Board of Podiatry Examiners

ORIGINAL filed this 14th day of August, 2008, with:

Arizona State Board of Podiatry Examiners
1400 West Washington Ste. 230
Phoenix, Arizona 85007

COPY of the foregoing mailed this 14th day of August, 2008 to:

Edward Ladley
Olson Jantsch & Bakker, P.A.
7243 North 16th Street
Phoenix, AZ 85020

By: Sue Doyle

#223967

7/14/08