

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

Case No. MD-19-0860A

3 **IVA A. SMOLENS, M.D.**

**ORDER FOR LETTER OF
REPRIMAND AND PROBATION;
AND CONSENT TO THE SAME**

4 Holder of License No. 35752
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

7 Iva A. Smolens, M.D. ("Respondent") elects to permanently waive any right to a
8 hearing and appeal with respect to this Order for Letter of Reprimand and Probation;
9 admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of
10 this Order by the Board.

11 **FINDINGS OF FACT**

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

14 2. Respondent is the holder of license number 35752 for the practice of
15 allopathic medicine in the State of Arizona.

16 3. The Board initiated case number MD-19-0860A after receiving notification of
17 a malpractice settlement regarding Respondent's care and treatment of a 64 year-old
18 female patient ("LE") alleging improper performance of a right upper lobectomy.

19 4. In late 2017, LE presented to Respondent with a history of smoking and two
20 right upper lob masses mildly elevated standardized uptake value ("SUV") on a PET scan.
21 A work-up proceeded, finding on needle nodule biopsy that at least one was positive for
22 poorly differentiated carcinoma probably a primary adenocarcinoma of the lung. LE had an
23 endobronchial ultrasound ("EBUS") with negative nodal metastases. LE's pulmonary
24 function tests ("PFT") showed an FEV1 of 2.1 liters and a diffusing scan only 30% of
25 predicted.

1 **ORDER**

2 IT IS HEREBY ORDERED THAT:

- 3 1. Respondent is issued a Letter of Reprimand.
4 2. Respondent is placed on Probation with the following terms and conditions:

5 **a. Continuing Medical Education**

6 Respondent shall within 6 months of the effective date of this Order obtain no less
7 than 5 hours of Board staff pre-approved Category I Continuing Medical Education
8 ("CME") regarding pulmonary anatomy and video-assisted thoracic surgery. Respondent
9 shall within 30 days of the effective date of this Order submit her request for CME to the
10 Board for pre-approval. Upon completion of the CME, Respondent shall provide Board
11 staff with satisfactory proof of attendance. The CME hours shall be in addition to the hours
12 required for the biennial renewal of medical licensure. The Probation shall terminate upon
13 Respondent's proof of successful completion of the CME.

14 **b. Obey All Laws**

15 Respondent shall obey all state, federal and local laws, all rules governing the
16 practice of medicine in Arizona, and remain in full compliance with any court ordered
17 criminal probation, payments and other orders.

18 3. The Board retains jurisdiction and may initiate new action against
19 Respondent based upon any violation of this Order. A.R.S. § 32-1401(27)(s).

20 DATED AND EFFECTIVE this 4th day of September, 2020.

21
22 ARIZONA MEDICAL BOARD

23
24 By Patricia E. McSorley for
25 Patricia E. McSorley
Executive Director

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2 **CONSENT TO ENTRY OF ORDER**

3 1. Respondent has read and understands this Consent Agreement and the
4 stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Respondent
5 acknowledges she has the right to consult with legal counsel regarding this matter.

6 2. Respondent acknowledges and agrees that this Order is entered into freely
7 and voluntarily and that no promise was made or coercion used to induce such entry.

8 3. By consenting to this Order, Respondent voluntarily relinquishes any rights to
9 a hearing or judicial review in state or federal court on the matters alleged, or to challenge
10 this Order in its entirety as issued by the Board, and waives any other cause of action
11 related thereto or arising from said Order.

12 4. The Order is not effective until approved by the Board and signed by its
13 Executive Director.

14 5. All admissions in this Order made by Respondent are solely for final
15 disposition of this matter and any subsequent related administrative proceedings or civil
16 litigation involving the Board and Respondent. Therefore, said admissions by Respondent
17 are not intended or made for any other use, such as in the context of another state or
18 federal government regulatory agency proceeding, civil or criminal court proceeding, in the
19 State of Arizona or any other state or federal court.

20 6. Notwithstanding any language in this Order, this Order does not preclude in
21 any way any other State agency or officer or political subdivision of this State from
22 instituting proceedings, investigating claims, or taking legal action as may be appropriate
23 now or in the future relating to this matter or other matters concerning Respondent,
24 including but not limited to, violations of Arizona's Consumer Fraud Act. Respondent
25 acknowledges that, other than with respect to the Board, this Order makes no
representations, implied or otherwise, about the views or intended actions of any other

1 state agency or officer or political subdivisions of the State relating to this matter or other
2 matters concerning Respondent.

3 7. Upon signing this agreement, and returning this document (or a copy thereof)
4 to the Board's Executive Director, Respondent may not revoke the consent to the entry of
5 the Order. Respondent may not make any modifications to the document. Any
6 modifications to this original document are ineffective and void unless mutually approved
7 by the parties.


8 8. This Order is a public record that will be publicly disseminated as a formal
9 disciplinary action of the Board and will be reported to the National Practitioner's Data
10 Bank and on the Board's web site as a disciplinary action.

11 9. If any part of the Order is later declared void or otherwise unenforceable, the
12 remainder of the Order in its entirety shall remain in force and effect.

13 10. If the Board does not adopt this Order, Respondent will not assert as a
14 defense that the Board's consideration of the Order constitutes bias, prejudice,
15 prejudgment or other similar defense.

16 11. Any violation of this Order constitutes unprofessional conduct and may result
17 in disciplinary action. A.R.S. § § 32-1401(27)(s) ("[v]iolating a formal order, probation,
18 consent agreement or stipulation issued or entered into by the board or its executive
19 director under this chapter.") and 32-1451.

20 12. **Respondent has read and understands the conditions of probation.**

21 

22 IVA A. SMOLENS, M.D.

DATED: 8/18/2020

23 EXECUTED COPY of the foregoing mailed
24 this 4th day of September, 2020 to:

25 Iva A. Smolens, M.D.
Address of Record

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ORIGINAL of the foregoing filed
this 4th day of September, 2020 with:

Arizona Medical Board
1740 West Adams, Suite 4000
Phoenix, Arizona 85007

Michelle Robles
Board staff