

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **JAMES D. GORDON, M.D.**

4 Holder of License No. 28386
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Case No. MD-20-0706A

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

7 James D. Gordon, M.D. ("Respondent") elects to permanently waive any right to a
8 hearing and appeal with respect to this Order for a Letter of Reprimand; admits the
9 jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of this Order
10 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 28386 for the practice of
15 allopathic medicine in the State of Arizona.

16 3. The Board initiated case number MD-20-0706A after receiving notification of
17 a malpractice settlement regarding Respondent's care and treatment of a 7 year-old male
18 patient ("AH") alleging failure to diagnose cholesteatoma with subsequent damage and
19 hearing loss.

20 4. AH was an established patient of the ENT Clinic where Respondent
21 practices who had previously been treated by other providers for recurrent ear infections.
22 AH had previously been diagnosed with allergic rhinitis, eustachian tube dysfunction,
23 conductive hearing loss, and otitis media in both ears. AH's treatment included placement
24 of tympanostomy tubes, removal of adenoids and tonsils and a third surgery was
25 performed to replace the indwelling tympanostomy tubes.

1 5. In September, 2016 Respondent first evaluated AH and over the course of
2 treatment recommended continuance of previous treatment regimen including topical
3 antibiotic ear drops, an additional surgery to replace indwelling tympanostomy tubes.
4 Respondent also recommended a CT scan to evaluate the mastoid bone behind the ear,
5 however no CT was performed.

6 6. AH was currently being periodically tested by a school based audiologist,
7 with testing that indicated worsening of conductive hearing loss in the right ear. The
8 audiologist noted red and abnormal looking tissue in the right ear and recommended that
9 AH's parents seek other medical opinions.

10 7. Subsequently, AH presented to a pediatric otolaryngologist who noted that
11 the clinical appearance of the eardrum and the progressive conductive hearing loss in the
12 right ear were suggestive of a destructive process in the right middle ear. A CT scan of the
13 ears, mastoid and temporal bone showed a cholesteatoma in the right middle ear and
14 mastoid bone behind the ear. The otolaryngologist removed the cholesteatoma and
15 repaired the ear drum. A second look exploratory surgery was performed by an ENT and a
16 prosthesis was placed to help to restore AH's hearing. The surgery was partially
17 successful in hearing restoration; however, due to persistent significant asymmetry in
18 hearing between his two ears AH was prescribed and elected to use a hearing aid in his
19 right ear.

20 8. The standard of care requires a physician to consider a cholesteatoma
21 diagnosis in the setting of a child with recurrent ear infections, ear drainage, ear pain, and
22 a progressive conductive hearing loss. Respondent deviated from this standard of care by
23 failing to diagnose a cholesteatoma in the right ear and mastoid of a child.

24 9. Actual patient harm was identified in that the delay in diagnosis resulted in
25 progression of the disease process, with involvement of vital functional structures,

1 progressive conductive hearing loss and permanent and ossicular damage to the right
2 inner ear. Additionally, AH required additional surgical intervention that was more complex
3 than if the diagnosis had been made earlier. AH experienced severe hearing loss in the
4 right ear which may be permanent and requires a hearing aid.

5 10. There was the potential for patient harm in that AH may need additional
6 surgical intervention to evaluate and remove recurrent cholesteatoma, a surgically
7 implanted bone anchored hearing aid and AH's hearing loss may impact his speech and
8 language development.

9 **CONCLUSIONS OF LAW**

10 a. The Board possesses jurisdiction over the subject matter hereof and over
11 Respondent.

12 b. The conduct and circumstances described above constitute unprofessional
13 conduct pursuant to A.R.S. § 32-1401(27)(e) ("Failing or refusing to maintain adequate
14 records on a patient.").

15 c. The conduct and circumstances described above constitute unprofessional
16 conduct pursuant to A.R.S. § 32-1401(27)(r) ("Committing any conduct or practice that is or
17 might be harmful or dangerous to the health of the patient or the public.").

18 **ORDER**

19 IT IS HEREBY ORDERED THAT:

20 1. Respondent is issued a Letter of Reprimand.

21 DATED AND EFFECTIVE this 14th day of September, 2021.

22 ARIZONA MEDICAL BOARD

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

1 **CONSENT TO ENTRY OF ORDER**

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

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

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

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

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

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

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

4 8. If the Board does not adopt this Order, Respondent will not assert as a
5 defense that the Board's consideration of the Order constitutes bias, prejudice,
6 prejudgment or other similar defense.

7 9. *Respondant has read and understands the terms of this agreement.*

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10 
11 JAMES D. GORDON, M.D.

DATED: 9/3/2021

12 EXECUTED COPY of the foregoing mailed
13 this 14th day of September 2021 to:

14 James D. Gordon, M.D.
15 Address of Record
16 Dee Dee A. Holden, Esq.
17 Holden & Armer, PC
18 4505 East Chandler Boulevard, Suite 210
19 Phoenix, Arizona 85048
20 Attorney for Respondent

21 ORIGINAL of the foregoing filed
22 this 14th day of September, 2021 with:

23 Arizona Medical Board
24 1740 West Adams, Suite 4000
25 Phoenix, Arizona 85007


Board staff