

1 anastomosis (“EEA”) stapler, at approximately 3 centimeters above the dentate line.
2 Respondent fired the EEA stapler without issue; however, the hemorrhoid remained.
3 Respondent subsequently performed an internal hemorrhoidectomy using a LigaSure
4 device, which went without incident. The gynecologist then took over the operation and
5 completed the bladder sling.

6 6. VS subsequently developed a rectovaginal fistula, requiring additional
7 surgical procedures, and resulting in additional complications.

8 7. The standard of care requires a physician to perform the proper procedure
9 for a patient diagnosed with both external and internal hemorrhoids.... Respondent
10 deviated from this standard of care by not performing the proper procedure for a diagnosis
11 of both external and internal hemorrhoids.

12 8. Actual patient harm was identified in that VS developed a rectovaginal fistula,
13 a known complication of stapled hemorrhoidopexy, which led to multiple interventions and
14 operations, including an emergent one when her first reanastomosis leaked.

15 **CONCLUSIONS OF LAW**

16 a. The Board possesses jurisdiction over the subject matter hereof and over
17 Respondent.

18 b. The conduct and circumstances described above constitute unprofessional
19 conduct pursuant to A.R.S. § 32-1401(27)(e)(“Failing or refusing to maintain adequate
20 records on a patient.”).

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

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1 ORDER

2 IT IS HEREBY ORDERED THAT:

3 1. Respondent is issued a Letter of Reprimand.

4 DATED AND EFFECTIVE this 16th day of April, 2019.

5 ARIZONA MEDICAL BOARD

6
7 By Patricia E. McSorley
8 Patricia E. McSorley
9 Executive Director

10 CONSENT TO ENTRY OF ORDER

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

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

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

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

22 5. All admissions made by Respondent are solely for final disposition of this
23 matter and any subsequent related administrative proceedings or civil litigation involving
24 the Board and Respondent. Therefore, said admissions by Respondent are not intended
25 or made for any other use, such as in the context of another state or federal government

1 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
2 any other state or federal court.

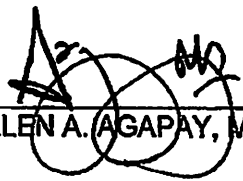
3 6. Upon signing this agreement, and returning this document (or a copy thereof)
4 to the Board's Executive Director, Respondent may not revoke the consent to the entry of
5 the Order. Respondent may not make any modifications to the document. Any
6 modifications to this original document are ineffective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

8 7. 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 8. If the Board does not adopt this Order, Respondent will not assert as a
12 defense that the Board's consideration of the Order constitutes bias, prejudice,
13 prejudgment or other similar defense.

14 9. *Respondent has read and understands the terms of this agreement.*

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ALLEN A. AGAPAY, M.D.

DATED: 2/27/19

1 EXECUTED COPY of the foregoing mailed
2 this 17th day of April, 2019 to:

3 Allen A. Agapay, M.D.
4 Address of Record

5 ORIGINAL of the foregoing filed
6 this 17th day of April, 2019 with:

7 Arizona Medical Board
8 1740 West Adams, Suite 4000
9 Phoenix, Arizona 85007

10 Michelle Robus
11 Board staff

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