BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

IN MEDICINE AND SURGERY

IN THE MATTER OF: **RICHARD D. DEXTER, D.O.** Holder of License No. **3441** For the practice of osteopathic medicine in the State of Arizona	**Case No.: 3978** **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR DECREE OF CENSURE**

On or about November 2, 2007, the AZ Board of Osteopathic Examiners (hereafter "Board") received a complaint from an individual alleging that Richard Dexter, D.O., failed to make available medical records to a patient's subsequent physician. On or about November 5, 2007, the Board opened case no. 3978 to investigate this complaint. Since that date, five additional complaints with similar allegations were received and consolidated into the case.

On December 3, 2007 the Board notified Respondent of this complaint and requested a response to the allegations contained therein. Due to Respondent not having informed the Board of a change in his address, that notice was not received until the third attempt at delivery, achieved on February 8, 2008.

On February 29, 2008, the Respondent provided an answer to the Board.

On May 17, 2008, the Board conducted its initial review of this and voted to refer this matter to an Investigative Hearing, to be heard on July 26, 2008.

At the request of Respondent, the Investigative Hearing was continued and re-scheduled for November 15, 2008.

On November 15, 2008, the Board heard case no. 3978. Respondent was present. The Board voted to continue the Investigative Hearing until January 10, 2009, to obtain additional information.

On January 10, 2009, the Board concluded the Investigative Hearing. Respondent was present. After hearing testimony and considering the documents and evidence submitted, the Board voted to enter the following Findings of Fact and Conclusions of Law, and Order for Decree of Censure.

JURISDICTIONAL STATEMENTS

1. The Board is empowered, pursuant to A.R.S. § 32-1800 et seq., to regulate the practice of osteopathic medicine in the State of Arizona, and the conduct of the persons licensed, registered, or permitted to practice osteopathic medicine in the State of Arizona.

2. Respondent is the holder of License No. 3441 issued by the Board for the practice of osteopathic medicine in the State of Arizona.

FINDINGS OF FACT

1. Sometime in August or September 2007, as part of closing his practice, Respondent sent all of his records to an out-of-state company to have them digitally scanned. Respondent knew at that time that he did not have the means to pay for the scanning.

2. In letter dated September 1, 2007 to his patients, Respondent told his patients to find other doctors and that their medical records would be available in October (2007) to be sent to them or their new doctors upon receipt of a written request to do so.

3. Beginning in that same period, September 2007, the Board received complaints from six patients that Respondent was not at his office, and was not making their records available to them.

4. Respondent acknowledged that, except for a down payment of approximately 10% of the quoted price for scanning, he did not pay the scanning company for the imaging of his records. Respondent knew that, because he did not make the agreed upon payments for the scanning services, the company would not release the electronic or paper records.

5. As of January 10, 2009, Respondent had not made an effort to make records available to patients. At the hearing on January 10, 2009, Respondent's bankruptcy attorney stated that attempts were being made to have an ombudsman affiliated with the bankruptcy court take possession of the records and provide them to Respondent's patients.

CONCLUSIONS OF LAW

1. The conduct described in Findings of Fact 1 through 5 herein constitutes unprofessional conduct as defined at A.R.S. § 32-1854 (6), which states,

> "Engaging in the practice of medicine in a manner that harms or may harm a patient or that the Board determines falls below the community standard."

2. The conduct described in Findings of Fact 1 through 5 herein constitutes unprofessional conduct as defined at A.R.S. § 32-1854 (21), which states,

> "Failing or refusing to establish and maintain adequate records on a patient as follows:
> (a) If the patient is an adult, for at least seven years after the last date the licensee provided the patient with medical or health care services.
> (b) If the patient is a child, either for at least three years after the child's eighteenth birthday or for at least seven years after the last date the licensee provided that patient with medical or health services, whichever date occurs first.
> (c) If the patient does before the expiration of the dates prescribed in subdivision (a) or (b) of this paragraph, for at least three years after the patient's death.

3. The conduct described in Findings of Fact 1 through 5 herein constitutes unprofessional conduct as defined at A.R.S. § 32-1854 (28), which states,

> "Failing to make patient medical records in the physician's possession promptly available to a physician assistant, a nurse practitioner, or a person licensed pursuant to this chapter or a podiatrist, chiropractor, naturopathic physician, physician or homeopathic physician licensed under chapter 7, 8, 13, 14 or 29 of this title, on receipt of proper authorization to do so from the patient, a minor patient's parent, the legal guardian or the patient's authorized representative or failing to comply with title 12, chapter 13, article 7.1."

ORDER

Pursuant to the authority vested in the Board, **IT IS HEREBY ORDERED** that Richard D. Dexter, D.O., Holder of osteopathic medical License number 3441, is issued a **DECREE OF CENSURE** pursuant to the provisions of A.R.S. § 32-1855 (E)(4).

ISSUED THIS 29th DAY OF January, 2009.

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY

By: Elaine LeTarte

Elaine LeTarte, Executive Director

NOTICE OF RIGHT TO REQUEST REVIEW OR REHEARING

You have the right to request a rehearing or review of this matter pursuant to A.R.S. § 41-1092.09. The request for rehearing or review must be filed with the Arizona Board of Osteopathic Examiners within thirty (30) days. If you request a review or rehearing, you must base your request on at least one of the eight grounds for review or rehearing that are allowed under A.A.C. R4-22-106(D). Failure to file a motion for rehearing or review within 30 days has the effect of prohibiting you from seeking judicial review of the Board's decision in the AZ Courts.

Original "Findings of Fact, Conclusions of Law and Order for Decree of Censure" filed this 29th day of January, 2009 with the:

Arizona Board of Osteopathic Examiners
In Medicine and Surgery
9535 East Doubletree Ranch Road
Scottsdale AZ 85258-5539

Copy of the foregoing "Findings of Fact, Conclusions of Law and Order for Decree of Censure" send by certified mail, return receipt requested this 29th day of January,2009 to:

Richard D. Dexter D.O.
3801 N Campbell Ave, Ste D
Tucson, AZ 85719

Copies of the foregoing "Findings of Fact, Conclusions of Law and Order for Decree of Censure" sent via interagency mail this 29th day of January 2009 to:

Marc Harris, AAG
Office of the Attorney General CIV/LES

1275 West Washington
Phoenix AZ 85007

Kathy Fowkes

Certified Mail: 7006 0810 0002 2000 8130