BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **JOSEPH J. FRANZETTI, M.D.** Holder of License No. 26738 For the Performance of Healthcare Tasks In the State of Arizona	Case No. MD-13-0279A **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR DECREE OF CENSURE AND PROBATION**

The Arizona Medical Board ("Board") considered this matter at its public meeting on April 18, 2014. Joseph J. Franzetti, M.D. ("Respondent") appeared before the Board for a formal interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(H). Respondent was represented by Michael E. Bradford. After due consideration of the facts and law applicable to this matter, at its meeting on June 11, 2014, the Board voted to issue the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

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

2. Respondent is the holder of license number 26738 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-13-0279A after receiving a complaint from a former female inmate ("LM"). The complaint alleged Respondent engaged in inappropriate contact with LM during psychiatric evaluations while she was incarcerated between 2005 and 2006. The complaint also alleged that upon LM's release in February of 2006, Respondent became sexually intimate with LM.

4. LM stated that while incarcerated, she underwent mandated psychiatric evaluations by Respondent. She further alleged that six months into her incarceration,

Respondent started to see her twice a month. LM further stated that she and Respondent had an intimate relationship from her release date until July of 2009.

5. Respondent contended that he only evaluated LM three times while she was incarcerated. This response is contradicted by LM's prison medical records, which establish that Respondent evaluated LM on nine occasions.

6. Respondent admitted to having an inappropriate physical relationship with LM upon her release from incarceration.

7. The Medical Consultant ("MC") found that Respondent engaged in sexual conduct with LM while acting as her treatment provider. The MC further determined that Respondent's conduct was in violation of the American Psychiatric Association's ("APA's") principles of medical ethics. Specifically, Section 2 of the APA's principles of medical ethics states that a physician shall uphold the standards of professionalism and that sexual activity with a current or former patient is unethical.

8. The standard of care requires a psychiatrist to avoid engaging in sexual conduct with a current or former patient.

9. Respondent deviated from the standard of care by engaging in sexual conduct with a current or former patient.

10. This inappropriate relationship caused LM to incur significant anxiety and depressive symptoms.

11. During the course of the investigation, Respondent underwent a psychosexual evaluation by the Behavioral Medicine Institute. The evaluation, in part, concluded that Respondent would be safe to practice so long as he completed an intensive course of professional sexual misconduct-specific treatment and had a licensed female healthcare provider chaperone all visits with female patients.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Decree of Censure.

2. Respondent is placed on probation for 10 years with the following terms and conditions:

a. Treatment

Respondent shall within six months of the effective date of this Order attend, at his expense, an intensive course on professional sexual misconduct-specific treatment. The course must be provided at a Board approved psychiatric treatment center. Upon completion of the treatment course, Respondent shall provide Board Staff with satisfactory proof of completion of the treatment course.

b. Practice Restriction

Respondent shall have a **female chaperone** present, whose view is unencumbered, while examining or treating **all female patients** in all settings, including but not limited to office, hospital, and clinic. The female chaperone must be an Arizona licensed healthcare provider (i.e. registered nurse, licensed practical nurse or physician assistant) employed by the Respondent or the setting in which he is providing services and may not be a representative or relative who accompanied the patient. Respondent shall instruct the female chaperone to document her presence by signing, dating, and

legibly printing her name on each patient's chart at the time of the examination. Respondent shall instruct the female chaperone to immediately report any inappropriate behavior to Respondent and the Board.

c. Practice Monitor

Within 30 days of the effective date of this Order, Respondent shall enter a contract with a Board pre-approved monitoring company ("Monitor") to provide all monitoring services. Respondent shall bear all costs of monitoring requirements and services. The Monitor shall conduct quarterly chart reviews. The purpose of the chart review is to determine if Respondent is compliant with the chaperone requirement of probation. Based upon the chart review, the Board retains jurisdiction to take additional disciplinary or remedial action.

d. Obey All Laws

Respondent shall obey all state, federal and local laws, all rules governing the practice of medicine in Arizona.

e. Tolling

In the event Respondent should leave Arizona to reside or practice outside the State or for any reason should Respondent stop practicing medicine in Arizona, Respondent shall notify the Executive Director in writing within ten days of departure and return or the dates of non-practice within Arizona. Non-practice is defined as any period of time exceeding thirty days during which Respondent is not engaging in the practice of medicine. Periods of temporary or permanent residence or practice outside Arizona or of non-practice within Arizona, will not apply to the reduction of the probationary period.

f. Early Termination

Respondent may petition the Board to request early termination of the Probation no earlier than five years after the effective date of this Order.

3. Prior to the termination of probation, Respondent must submit a written request to the Board for release from the terms of this Order. Respondent's request must be in writing and submitted at least 30 days prior to the date he would like the matter to appear before the Board. In doing so, Respondent must provide the Board with evidence establishing that he has successfully satisfied all of the terms and conditions of this Order. The Board has the sole discretion to determine whether all of the terms and conditions of this Order have been met and whether Respondent has adequately demonstrated that he has addressed all of the issues identified in it. At that time, the Board shall determine whether it is appropriate to release Respondent from this Order or take any other action that is consistent with its statutory and regulatory authority.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

DATED AND EFFECTIVE this 1st day of July, 2014.

ARIZONA MEDICAL BOARD

By C Lloyd Vest

C. Lloyd Vest, II
Executive Director

EXECUTED COPY of the foregoing mailed
this 1st day of July, 2014 to:

Michael E. Bradford, Esq.
Bradford Law Offices, PLLC
1601 North 7th Street, Suite 400
Phoenix, Arizona 85006
Attorney for Respondent

ORIGINAL of the foregoing filed
this 1st day of July, 2014 with:

Arizona Medical Board
9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

Mary Dubey
Board Staff