BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

IN MEDICINE AND SURGERY

IN THE MATTER OF: **LYNN SWEET, D.O.** Holder of License No. **3246** For the practice of osteopathic medicine in the State of Arizona	))))))))))	**Case No.: DO-10-0021A** **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR DECREE OF CENSURE**

On February 5, 2010, the Arizona Board of Osteopathic Examiners ("Board") received a complaint against Lynn Sweet, D.O. ("Respondent"). Respondent was notified of the complaint on February 22, 2010, and on April 22, 2010. On May 10, 2010, Board staff subpoenaed and picked up medical records at Respondent's office. Respondent did not respond to the complaint.

On June 17, 2010, the Board noticed Respondent to appear at the Investigative Hearing of this matter on July 31, 2010, and provided Respondent with the investigative materials, pursuant to A.R.S. § 32-3206. Respondent received those on June 22, 2010. Respondent did not respond to that notice, but requested a continuance through an attorney on July 27, 2010. The request was denied on the grounds that it was not timely made and because the attorney who made the request for continuance was not licensed to practice in Arizona or before the Board on *pro hac vice* standing.

On July 31, 2010, the Board conducted the Investigative Hearing. Respondent was present and was not represented by counsel. The Board continued the matter to allow Board staff to draft findings of fact, conclusions of law, and an order for decree of censure. On September 2, 2010 the Board met to discuss the draft findings of fact, conclusions of law and the order for decree of censure. Respondent was not present and was not represented by counsel.

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. 3246 issued by the Board for the practice of osteopathic medicine in the State of Arizona.

FINDINGS OF FACT

1. Patient D.G. had been a patient at Respondent's practice for approximately 15 years for treatment of hypertension and chronic cardiopulmonary disease. Since 2006, D.G. had been receiving free medication through a pharmaceutical company patient assistance program. A condition of the program is that the medication be dispensed quarterly from a physician's office.

2. On October 21, 2009, D.G. appeared at Respondent's office and was told that there would be a $79.00 "service charge" for picking up the medication. D.G. was also told he would have to fill out new paperwork because Respondent's staff could not locate his medical records.

3. Respondent testified that the charge was for an examination of patient D.G. that day. The examination was initiated when a medical assistant tried to take D.G.'s blood pressure. D.G. left the office prior to any further examination being done. Later, D.G. stopped payment on the $79.00 charge.

4. Patient D.G. contacted Respondent's office on January 6, 2010 to inquire about picking up that quarter's medication. Respondent's staff notified D.G. that Respondent no longer considered D.G. a patient and would not dispense the program medication nor call a prescription into a pharmacy.

5. D.G.'s medical record does not contain a copy of a letter notifying D.G. that he had been discharged as a patient, nor is there any notation regarding discharge on the record of the last visit on October 21, 2009 or on any document dated after that visit.

6. During 2006 through 2010, when he was being dispensed the program's medication, D.G. was seen by Nurse Practitioner Laurie Kelso on June 23, 2006, and not again until the disputed office visit with Genevieve Smith, PA-C on October 21, 2009. A message record dated March 17, 2009 states that Respondent directed his staff to inform D.G. that he needed to make a follow up appointment before more medication would be dispensed for another quarter.

7. Respondent testified that the patient was seen once in 2008. No record of that visit was provided to the Board.

8. Respondent testified that he did not know if D.G. was under the care of another physician during the years the medication was dispensed.

9. Respondent deviated from the standard of care in that he did not monitor the patient's condition during the years he dispensed the medication to the patient; did not conduct the examinations or clinical laboratory studies appropriate to the management of chronic hypertension and cardiopulmonary disease; did not see the patient for timely follow up visits, did not refer the patient for specialist consultations; nor did he take note if the patient was being seen by another physician for any reason.

CONCLUSIONS OF LAW

1. The conduct described above is a violation of unprofessional conduct pursuant to 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 above is a violation of unprofessional conduct pursuant to A.R.S. § 32-1854(14), which states "Charging a fee for services not rendered or dividing a professional fee for patient referrals. This paragraph does not apply to payments from a medical

researcher to a physician in connection with identifying and monitoring patients for clinical trial regulated by the United States food and drug administration."

3. The conduct described above is a violation of unprofessional conduct pursuant to A.R.S. § 32-1854(26), which states "Charging or collecting an inappropriate fee. This paragraph does not apply to a fee that is fixed in a written contract between the physician and the patient and entered into before treatment begins."

4. The conduct described above is a violation of unprofessional conduct pursuant to A.R.S. § 32-1854(38), which states "Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so."

5. The Board has taken action against Respondent's license prior to the Investigative Hearing held on July 31, 2010, as follows:

(a) At its meeting on September 29, 2007 the Board issued a non-disciplinary Letter of Concern to Respondent, based on concerns about his supervision of staff and prescribing habits, and required Respondent to complete twenty (20) hours of continuing medical education in appropriate prescribing of pain medications and pain management.

(b) At its meeting on September 12, 2009, the Board found that Respondent had engaged in unprofessional conduct in that he did not respond to multiple Board-issued subpoenas and lacked communication with the Board. The Board levied a civil penalty of $250, which Respondent paid in a timely manner.

(c) At its meeting on March 31, 2010, the Board found that Respondent had engaged in unprofessional conduct in that he did not create and maintain adequate records of four patients, and did not make records available on a timely manner. The Board issued a Decree of Censure and placed Respondent's license on Probation for two years, during which time he was to obtain twenty hours of approved continuing medical education in medical record keeping and contract with a practice monitor approved by the

Board to remedy his medical record keeping. The Order became effective on June 8, 2010.

ORDER

Pursuant to the authority vested in the Board, **IT IS HEREBY ORDERED** that Lynn Sweet, D.O., holder of osteopathic medical License number 3246, is issued a **DECREE OF CENSURE**.

NOTICE OF RIGHT TO REQUEST REVIEW OR REHEARING

Respondent has the right to request a rehearing or review of this matter pursuant to A.R.S. § 41-1092.09. The motion for rehearing or review must be filed with the Arizona Board of Osteopathic Examiners within thirty (30) days. If Respondent requests a review or rehearing, that motion must be based 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 Respondent from seeking judicial review of the Board's decision. 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.

ISSUED THIS 3rd DAY OF SEPTEMBER 2010.
ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AN SURGERY

By: Elaine LeTarte

Elaine LeTarte, Executive Director

Original "Findings of Fact, Conclusions of Law and Order for Decree of Censure" sent by certified mail, return receipt requested this 3rd day of September, 2010 to:

Lynn Sweet, D.O.
Address of Record

Copies of this "Findings of Fact, Conclusions of Law and Order for Decree of Censure" sent this 3rd day of September, 2010 to:

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

Camila Alarcon, AAG
Office of the Attorney General CIV/LES
1275 West Washington
Phoenix AZ 85007

Complainant

Kathy Brookes