BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

IN MEDICINE AND SURGERY

IN THE MATTER OF:	)	**Case No.: DO-09-0034A**
	)	
LYNN SWEET, D.O. Holder of License No. **3246**	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR DECREE OF CENSURE**
For the practice of osteopathic medicine in the State of Arizona	)	

On March 2, 2009, the Arizona Board of Osteopathic Examiners ("Board") received a complaint against Lynn Sweet, D.O. ("Respondent"). Respondent was first notified of the complaint on March 11, 2009, and later noticed four additional times, the last being on January 11, 2010. On January 11, 2010, the Board received Respondent's response to the complaint, without the patient records that Board staff has requested with the notice of the complaint. On January 13, 2010, Board issued a subpoena for the records. On January 25, 2010 Respondent re-filed his response along with the patient records.

On March 25, 2010, the Board noticed Respondent to appear at the Investigative Hearing of this matter on May 22, 2010, and provided Respondent with the investigative materials, pursuant to A.R.S. § 32-3206. Respondent received those on March 29, 2010. Respondent did not respond to the notice for hearing, nor did he appear on May 22, 2010.

On June 14, 2010, the Board issued a second notice for Respondent to appear at the Investigative Hearing on July 31, 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 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 did not appear 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 C.H. was a patient at Respondent's practice for over three years, initially presenting and being treated for hyperlipidemia, hypertension, sleep apnea and diabetes. In her complaint, C.H. stated that she had been going to Respondent's office every month for the past four months prior to March 2009 to pick up a prescription for a refill of pain medication. She stated that on February 26, 2010, she scheduled an appointment for February 28, 2009 using Respondent's on-line system.

2. The evening before her scheduled appointment on February 28, 2009, C.H. received a voicemail message from Respondent's office staff stating that they had a new policy and anyone coming in for refills of pain medication needed to pay $120 in cash for the visit. She appeared at Respondent's office the next day, but when her request for an exception to the cash-only policy was denied, she cancelled her appointment. C.H. had not changed her insurance coverage since her prior appointment.

3. Respondent testified that if a patient had insurance, the patient would only be responsible for the co-payment. Respondent testified that the reason C.H. was asked to pay cash was that she did not have her insurance card with her that day.

4. Respondent testified that the $120 charge was for a level four service visit; this was the level of service typically done for chronic pain patients to refill prescriptions. Patients who scheduled their appointments by using the practice's on-line system were charged $69 for such a visit.

5. On August 9, 2008, C.H. was seen by Respondent's Nurse Practitioner, Theresa Kelso. NP Kelso recorded a diagnosis of "chronic back pain" without a physical examination being done, and in the absence of prior complaints or reports of back pain. C.H. was prescribed Norco (hydrocodone bitartrate with acetophenamine), and Flexeril. C.H. was seen again by NP Kelso on October 4, 2008 and December 27, 2008. No physical examination was documented for those visits; C.H. had her prescription for Norco refilled at both visits. There were no records of a visit by C.H. in November, 2009.

6. On January 31, 2009, Respondent saw C.H. for the first time after she had been diagnosed with chronic back pain. The medical record did not document what prescription was filled; it says "1 mo." A carbon copy of a prescription for Norco was included in the records. The medical record does not document a full physical examination or review of systems having been done at that visit.

7. Respondent deviated from the standard of care in not performing physical examinations, imaging and laboratory testing appropriate to support an initial diagnosis, and in not periodically conducting appropriate follow up examinations and testing to monitor the progress of a chronic condition.

8. Respondent did not conduct the level of examination consistent with the billing code used, in that a level four service visit includes a detailed history, a detailed examination of

the patient that included a review of systems, moderate complexity of medical decision-making that included assessment, and plan for the patient's ongoing care.

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(34), which states "Lack of or inappropriate direction that endangers a patient's or the public's health or may reasonably be expected to do so."

3. 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."

4. 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 files a motion for 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 motion 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

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