BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

IN MEDICINE AND SURGERY

IN THE MATTER OF: **KENNETH R STEPHAN, D.O.** Holder of License No. **3908** For the practice of osteopathic medicine in the State of Arizona	**Case No.: 4013** **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR SUSPENSION, DECREE OF CENSURE, PROBATION AND CONTINUING MEDICAL EDUCATION**

On or about January 7, 2008, the AZ Board of Osteopathic Examiners (hereafter "Board") received correspondence from the Utah Division of Occupational and Professional Licensing (hereafter "Utah") alleging that Kenneth R Stephan, D.O., (hereafter Respondent) had employed an unlicensed person in his office. On February 4, 2008, the Board opened case no. 4013 to investigate this matter.

On February 27, 2008 the Board notified Respondent of this matter and requested a response to the allegations contained therein.

On March 11, 2008, the Respondent provided an answer to the Board.

On November 15, 2008, the Board conducted its initial review of this matter and voted to refer it to an Investigative Hearing, to be heard on January 10, 2009.

On January 10, 2009, the Board heard case no. 4013. 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 Suspension, Decree of Censure, Probation and Continuing Medical Education.

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. 3908 issued by the Board for the practice of osteopathic medicine in the State of Arizona.

FINDINGS OF FACT

1. In the spring of 2006, Respondent allowed an unlicensed person, Hansel Rayner, (hereafter "Raynor") to examine patients, read and record information in those patients charts, and to otherwise present himself to Respondent's patients as a *bona fide* health care provider. This continued for every Tuesday afternoon for approximately ten weeks.

2. In a letter dated December 18, 2007, Respondent wrote a letter of recommendation to Utah on Raynor's behalf, referring to Raynor by the title "PA-C," stating they had worked together in Respondent's practice, and voicing high praise for Rayner's skill as a physician assistant.

3. In a second letter to Utah, dated January 7, 2008, Respondent recanted his earlier statements; stating that he had been aware in 2006 that Raynor was not licensed in AZ as a PA-C, and that Raynor had been a volunteer who assisted him with health tasks.

4. Respondent testified that he had not verified Raynor's license status prior to allowing Raynor access to his practice in 2006, but had relied instead on Raynor's assertions of training and status.

5. Respondent testified that he had presented Raynor to patients as if Raynor was a *bona fide* health care provider.

6. Respondent testified that he had allowed Raynor to be present during and to conduct physical examinations of patients as if Raynor was a *bona fide* health care provider, without regard to the privacy of his patients.

7. Respondent testified that he had discussed possible diagnoses and treatment regimens of patients with Raynor, without regard to the possibility that doing so might compromise the quality of care being rendered.

8. Respondent testified that he had allowed Raynor to read and make entries into patient charts, without regard to federal HIPAA standards.

CONCLUSIONS OF LAW

1. The conduct described in Findings of Fact 1 through 8 herein constitutes unprofessional conduct as defined at A.R.S. § 32-1854 (10), which states, "Having professional connection with or lending one's name to an illegal practitioner of osteopathic medicine or any of the other healing arts."

2. The conduct described in Findings of Fact 1 through 5 herein constitutes unprofessional conduct as defined at A.R.S. § 32-1854 (35), which states, "Violating a federal law, a state law, or a rule applicable to the practice of medicine."

ORDER

IT IS HEREBY ORDERED that, pursuant to the authority vested in the Board by the provisions of A.R.S. § 32-1855 (E)(4)., osteopathic license no 3908, held by Kenneth R. Stephan, D.O., is **SUSPENDED** for a period of 30 days.

IT IS HEREBY ORDERED that, pursuant to the authority vested in the Board by the provisions of A.R.S. § 32-1855 (E)(4)., osteopathic license no 3908, held by Kenneth R. Stephan, D.O., is issued a **DECREE OF CENSURE**.

IT IS HEREBY ORDERED that, pursuant to the authority vested in the Board by the provisions of A.R.S. § 32-1855 (E)(4)., osteopathic license no 3908, held by Kenneth R. Stephan, D.O., is **PLACED ON PROBATION** for a period of six months, during which time Dr. Stephan is to complete 30 hours of continuing medical education (CME) in the areas of ethics, risk management, HIPAA and boundary issues. The CME is to be approved by the Executive Director in advance of the education being undertaken.

ISSUED THIS 2nd DAY OF FEBRUARY, 2009.

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY

By: _____

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 Suspension, Decree of Censure,
Probation and Continuing Medical Education
filed this 2nd day of February 2009 with the:

Arizona Board of Osteopathic Examiners
9535 East Doubletree Ranch Road
Scottsdale AZ 85258-5539

Copy of "Findings of Fact, Conclusions
of Law and Order for Suspension, Decree of Censure,
Probation and Continuing Medical Education
sent by certified mail, return receipt requested
this 2nd day of February, 2009 to:

Kenneth R Stephan D.O.
(address of record)

Copy of "Findings of Fact, Conclusions
of Law and Order for Suspension, Decree of Censure,
Probation and Continuing Medical Education
sent via interagency mail this 2nd
day of February 2009 to:

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

Kathy Fowkes

Cert Mail: 7006 0810 0002 2000 5818