

1 3. On July 6, 2012, S.K. filed a complaint with the Board because she felt that
2 Respondent's behavior was inappropriate at her mammogram appointment on June 28, 2011.

3 4. On June 28, 2011, S.K. had a mammogram performed at Respondent's office.
4 After the mammogram, Respondent advised S.K. that the images looked negative. Respondent
5 offered to show her the results and brought her into a small dark room where the only light
6 came from a large display screen showing the images of her breasts from the mammogram.
7 S.K. was alone in the room with Respondent. S.K. felt the images looked very large.
8 Respondent pointed out a mass in S.K.'s left breast that had been present since 2008. He
9 stated that the mass had not significantly changed since 2008. S.K. thought the mass had been
10 in her right breast.

11 5. Respondent asked if S.K. had a sense of humor and she replied, "yes." S.K.
12 stated Respondent then proceeded to make the images of her breasts have a conversation with
13 each other. S.K. stated Respondent used his computer mouse to make the images of each
14 breast bounce up and down as he spoke. S.K. became afraid and left the facility.

15 6. Respondent admits that he took S.K. into the reading room to review the images
16 from her mammogram and stated that the door was open and the room has foot traffic from
17 others, including the technologists. He admits he conducted the conversation between the
18 images of S.K.'s breasts on the computer but claims it was his attempt to assure S.K. that the
19 mammogram was negative and to relieve some of her tension or concerns.

20 7. Respondent's care fell below the standard of care by his visual and verbal actions
21 concerning the radiographic breast exam. Respondent failed to properly conduct himself in a
22 professional manner when explaining the results of the radiographic breast exam to S.K. on
23 June 28, 2011.

24 8. The aforementioned behavior resulted in Respondent practicing medicine in a
25 manner which had potential to harm patients and fell below the community standard of

1 professionally explaining the results of S.K.'s radiographic breast exam by failing to take into
2 account the patient's feelings or concerns regarding breast cancer.

3 **CONCLUSIONS OF LAW**

4 9. The conduct described above is a violation of unprofessional conduct pursuant
5 to A.R.S. § 32-1854 (6), which states "Engaging in the practice of medicine in a manner that
6 harms or may harm a patient or that the board determines falls below the community
7 standard."

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

11 **ORDER**

12 Pursuant to the authority vested in the Board,

13 **IT IS HEREBY ORDERED** that Philip Bain, D.O, holder of osteopathic medical License
14 number 2302 is issued a **DECREE OF CENSURE**.

15 **IT IS HEREBY FURTHER ORDERED** that Philip Bain, D.O., holder of osteopathic medical
16 License number 2302 is placed on **PROBATION for a period of Five (5) Years** from the effective
17 date of this Order, with the following terms:

18 1. **Continuing Medical Education:** Respondent shall complete twenty (20) hours
19 of continuing medical education (CME) on the topic of boundary issues. This CME is to be
20 approved by the Executive Director in advance of beginning the activity, and is to be completed
21 within six (6) months of the effective date of this Order at the Respondent's expense.

22 2. **Chaperone:** Respondent shall have a chaperone present in the room during
23 any consultation with a female patient, at his expense.
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1 3. **Costs:** Respondent shall bear all costs incurred regarding compliance with this
2 Order.

3 4. **Obey All Laws:** Respondent shall obey all federal, state and local laws, and all
4 rules governing the practice of medicine in the State of Arizona.

5 5. **Ceasing Practice in the State of Arizona:** In the event that Respondent
6 ceases to practice medicine in the State of Arizona, by moving out of state, failing to renew his
7 license, or maintaining an Arizona license but ceasing to practice clinical medicine or
8 administrative medicine requiring licensure, Respondent shall notify the Board that he has
9 ceased practicing in Arizona, in writing, within 10 days of ceasing to practice. In its sole
10 discretion, the Board may stay the terms of this Order until such time as the Respondent
11 resumes the practice of medicine in Arizona, or may take other action to resolve the findings of
12 fact and conclusions of law contained in this Consent Agreement and Order for Probation.

13 6. **Failure to Comply / Violation:** Respondent's failure to comply with the
14 requirements of this Order shall constitute an allegation of unprofessional conduct as defined
15 at A.R.S. § 32-1854(25) and proven violations may be grounds for further disciplinary action
16 (e.g., suspension or revocation of license).



ISSUED THIS 17th DAY OF SEPTEMBER 2012.
ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY

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By: Jenna Jones
Jenna Jones, Executive Director

NOTICE OF RIGHT TO REQUEST REVIEW OR REHEARING

Any party may 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

1 Osteopathic Examiners within thirty (30) days. If a party files a motion for review or rehearing,
2 that motion must be based on at least one of the eight grounds for review or rehearing that are
3 allowed under A.A.C. R4-22-106(D). Failure to file a motion for rehearing or review within 30
4 days has the effect of prohibiting judicial review of the Board's decision. Service of this order is
5 effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a motion for rehearing or
6 review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to
7 Respondent.

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9 Original "Findings of Fact, Conclusions of Law and Order for Decree of Censure and Probation"
filed this 17th day of September 2012 with:

10 Arizona Board of Osteopathic Examiners
11 In Medicine and Surgery
12 9535 East Doubletree Ranch Road
13 Scottsdale AZ 85258-5539

14 Copy of the "Finding of Fact, Conclusions of Law and Order for Decree of Censure and
15 Probation" sent by certified mail, return receipt requested, this 17th day of September, 2012 to:

16 Philip Bain, D.O.
17 Address of Record

18 Copies of this "Findings of Fact, Conclusions of Law and Order for Decree of Censure and
19 Probation" filed/sent this 17th day of September, 2012 to:

20 Randall Yavitz
21 Hunter, Humphrey & Yavitz
22 2633 E. Indian School Road, Ste. 440
23 Phoenix, AZ 85016

24 Sarah Selzer, AAG
25 Office of the Attorney General CIV/LES
1275 West Washington
Phoenix AZ 85007


