

1 Board voted to enter the following Findings of Fact and Conclusions of Law, and Order of
2 Censure.

3 **JURISDICTIONAL STATEMENTS**

4 1. The Board is empowered, pursuant to A.R.S. § 32-1800 et seq., to regulate the
5 practice of osteopathic medicine in the State of Arizona, and the conduct of the persons licensed,
6 registered, or permitted to practice osteopathic medicine in the State of Arizona.

7 2. Respondent is the holder of License No. 3901 issued by the Board for the practice
8 of osteopathic medicine in the State of Arizona.

9 **FINDINGS OF FACT**

10 1. On September 20, 2004 Respondent saw patient JL for a cardiovascular
11 examination, including an EKG and stress test. Patient JL accused Respondent of an
12 inappropriate sexual behavior during that examination. Patient told her friend immediately upon
13 leaving the Respondent's medical office, the attending nurse, Linda Sheldon, the next day and
14 filed a criminal report about the conduct of the Respondent to the Oro Valley Police department
15 on September 29, 2004.

16 2. Patient JL's complained and testified under oath before the Board on July 22,
17 2006 of the following conduct by Respondent during that examination:

- 18 a. Respondent asked her friend to leave the examining room, leaving her
19 alone with him.
20 b. Respondent asked her to remove her bra and then groped her breasts.
21 c. Respondent then pulled down her sweatpants and while wearing a glove,
22 massaged her clitoris, and inserted his fingers into her vagina.

23 3. After talking with patient JL on September 21, 2004, Nurse Linda Sheldon went
24 into the examination room used by Respondent and obtained a glove and other items from the
25 waste basket. The glove was eventually turned into the Oro Valley Police department.

4. Respondent, in his statements to the Oro Valley Police department and during his
Investigative Hearing sworn testimony on July 22, 2006 and December 9, 2006, denied any

1 inappropriate conduct during his examination on September 20, 2004 of patient JL. He denied
2 ever using a glove during the examination, groping her breasts, massaging her clitoris or placing
3 his fingers inside of her vagina.

4 5. The glove obtained from the office where the examination took place was
5 eventually tested for DNA by an Arizona Department of Public Safety criminalist on June 23,
6 2006. It was determined that there was no DNA on the inside of the glove and that on the
7 outside of the glove a DNA mixture was found. The major component matched patient JL and
8 the minor component was inconclusive. Pursuant to a phone call to the examiner on July 24,
9 2006, the minor component was such that Respondent could be neither included nor excluded.

10 6. Respondent underwent evaluations by both Dr. Sucher, an addictionologist, on
11 April 10, 2006 and Dr. Gray, a psychiatrist, on October 3 and 10, 2006.

12 7. Dr. Sucher's recommendation included Respondent's self determination to have
13 female chaperones present during female examinations. He also recommended that Respondent
14 attend a 'Maintaining of Professional Boundaries' CME course.

15 8. Dr. Gray's recommendation was more specific due to his belief that Respondent
16 was evasive in his answers during his evaluation. His recommendation included a professional
17 chaperone with signatures in the charts for monitoring, boundary violations and victim empathy
18 CMEs, the maintenance of a cognitive/behavioral risk management workbook and monitoring of
19 random reports submitted by patients, co-workers and supervisory staff for a period of six
20 months to one year.

21 9. The Board determined that based on its review of the information received and
22 the testimony of both the complainant JL and Respondent that the complainant JL was more
23 credible and that action should be taken against Respondent's license due to the performance of
24 an inappropriate examination.

25
CONCLUSIONS OF LAW



ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

By: _____

Jack Confer, 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 Probation" filed this 25th day of January, 2007 with the:

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

Copy of the foregoing "Findings of Fact, Conclusions of Law and Order for Probation" send by certified mail, return receipt requested this 25th day of January, 2007 to:

Peter Akmajian, Esq.
CHANDLER & UDALL, LP
33 North Stone Avenue, Suite 2100
Tucson, Arizona 85701-1415
Attorney for Dr. Bahureksa

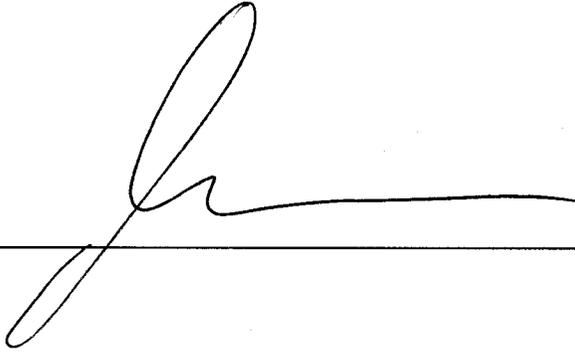
Budi Bahureksa, D.O.
1521 East Tangerine Road, Suite 315
Oro Valley, AZ 85755

Copies of the foregoing "Findings of Fact, Conclusions of Law and Order for Probation"

1 sent via regular mail/handdelivered this 25th day of January, 2007 to:

2 Blair Driggs, AAG
3 Office of the Attorney General CIV/LES
4 1275 West Washington
5 Phoenix AZ 85007

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 **NOTICE OF RIGHT TO APPEAL**

2 You have the right to appeal this decision of the Arizona Board of Osteopathic Medicine by
3 filing a Complaint for Judicial Review with the Superior Court **within thirty-five (35) days of**
4 **the mailing of this Order.** See A.R.S. §§ 32-1856, 12-904 and 41-1092.08.

5 Original "Denial of Request for Rehearing"
6 filed this 20th day of March, 2007 with the:

7 Arizona Board of Osteopathic Examiners
8 In Medicine and Surgery
9 9535 East Doubletree Ranch Road
10 Scottsdale AZ 85258-5539

11 Copy of the foregoing "Denial of Request for Rehearing"
12 send by certified mail, return receipt requested
13 this 20th day of March, 2007 to:

14 Peter Akmajian, Esq.
15 CHANDLER & UDALL, LP
16 33 North Stone Avenue, Suite 2100
17 Tucson, Arizona 85701-1415
18 Attorney for Dr. Bahureksa

19 Budi Bahureksa, D.O.
20 1521 East Tangerine Road, Suite 315
21 Oro Valley, AZ 85755

22 Copies of the foregoing "Denial of Request for Rehearing"
23 sent via regular mail/hand delivered this 20th day of March, 2007 to:

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

26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100


RECEIVED

FEB 21 2007

1 **CHANDLER & UDALL, LLP**
2 ATTORNEYS AT LAW
3 4801 E. BROADWAY BLVD., SUITE 400
4 TUCSON, ARIZONA 85711-3609
5 (520) 623-4353

AZOSTEOPATHIC BOARD

4 Peter Akmajian
5 Attorneys for Budi Bahureksa, D.O.

6 **BEFORE THE BOARD OF OSTEOPATHIC EXAMINERS**
7 **IN MEDICINE AND SURGERY**

8 IN THE MATTER OF:

9 **BUDI BAHUREKSA, D.O.**
10 Holder of License No. **3901**

NO. 3436

11 For the practice of osteopathic medicine in
12 the State of Arizona.

**REQUEST FOR REHEARING;
REQUEST FOR STAY**

13
14 Pursuant to A.R.S. § 41-1092.09 and pursuant to A.A.C. Rule 4-22-106(d),
15 Budi Bahureksa, D.O. hereby requests a rehearing of the Board's Findings of Fact, Conclusions
16 of Law and Order dated January 25, 2007. The grounds for this request are as follows:

- 17
- 18 1. Irregularity in the proceedings of the Board, and the Board's order, and there was
19 an abuse of discretion, which deprived Dr. Bahureksa of a fair hearing;
 - 20 2. Excessive penalty;
 - 21 3. Error in the admission or rejection of evidence or other errors of law occurring
22 at the hearing or during the progress of the proceedings;
 - 23 4. The Board's findings of fact and decision is not justified by the evidence and is
24 contrary to law.

25 As will be discussed in more detail below, the evidence is insufficient to support this
26 Board's order against Dr. Bahureksa. Indeed, it is submitted the Board itself does not believe

1 that Dr. Bahureksa is guilty of the allegations. Rather, this Board is troubled by the allegations,
2 and during the hearing of December 9, 2006, the Board expressed the desire to investigate the
3 matter further and to monitor Dr. Bahureksa as a part of that investigation.

4 However, this Board felt compelled to put Dr. Bahureska on probation because of the
5 belief that this Board could not take action to monitor Dr. Bahureksa without a probation. That
6 is not a proper ground to impose probation upon a physician when, as here, the evidence does
7 not support probation. The probation, therefore, constitutes a clear rush to judgement and has
8 denied Dr. Bahureksa a fair hearing and due process.

9 Furthermore, contrary to the beliefs expressed by the Board at the December 9th
10 hearing, this Board could have continued its investigation of Dr. Bahureska without imposing
11 probation. The Board has broad investigatory powers, and it could have and should have
12 exercised them to continue its investigation. Such an investigation would have allowed this
13 Board to more fully evaluate Dr. Bahureksa to determine the veracity, or lack of veracity, of
14 the allegations and of Dr. Bahureksa's defense.

15 Fairness and due process dictate that this Board not rush to judgment based on
16 questionable evidence and an incomplete understanding of Dr. Bahureksa's character. At the
17 very least, the Board must monitor Dr. Bahureksa for a period of not less than 6 months and
18 then revisit the issue of what action, if any, to take with regard to the allegations.

19 Additionally, the Board should stay its order pending the appeals process. Placing this
20 order on the internet has already had a devastating effect on Dr. Bahureksa's practice. That is
21 plainly unfair, given that Dr. Bahureksa is contesting and appealing the order and given that
22 the order is not final. The Board should stay the Order and withdraw the order from the
23 internet immediately, pending completion of the administrative and legal process.

24 The grounds for this Motion will be discussed in more detail in the attached
25 Memorandum of Points and Authorities.

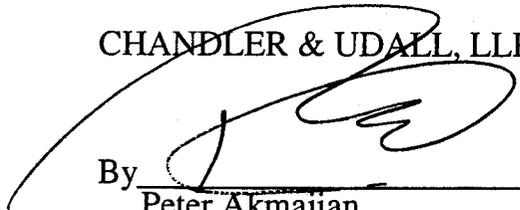
26

CHANDLER & UDALL, LLP
4801E. BROADWAY BLVD., SUITE 400
TUCSON, ARIZONA 85711-3609
(520) 623-4353

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

RESPECTFULLY SUBMITTED this 20th day of February, 2007

CHANDLER & UDALL, LLP



By _____
Peter Akmajian
Attorneys for Budi Bahureksa, D.O.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 **I. THE BOARD'S ORDER IS UNSUPPORTED BY THE EVIDENCE, IS**
4 **CONTRARY TO THE LAW AND WAS AN ABUSE OF DISCRETION; THE**
5 **PENALTY WAS EXCESSIVE**

6 **A. THIS BOARD HAS NOT TRULY FOUND THAT DR. BAHURESKA ENGAGED IN THE**
7 **CONDUCT ALLEGED**

8 Even on its face, this Board's Findings of Fact do not conclude that Dr. Bahureska
9 engaged in any unprofessional conduct. The Findings of Fact discuss the patient's allegations
10 and the general course of this Board's investigation.

11 In paragraph 9 of the findings, this Board stated that it found the patient "more credible."
12 However, this Board did not find that Dr. Bahureska engaged in the alleged conduct. Given
13 this fact, the probation is wholly unjustified and a violation of Dr. Bahureska's due process
14 rights.

15 **B. THE EVIDENCE DOES NOT SUPPORT THE ALLEGATION THAT DR. BAHURESKA**
16 **ENGAGED IN THE ALLEGED CONDUCT**

17 First, this Board's Findings of Fact do not reflect that the patient herself has withdrawn
18 her complaint. (Exhibit A hereto.) Although this withdrawal of the complaint took place in
19 the context of a civil claim (in which the claimant accepted money), it is nonetheless a
20 withdrawal. That undisputed fact should appear as one of the Board's findings.

21 Moreover, this Board's Findings of Fact failed to address other matters that have been
22 testified to. Specifically, Dr. Bahureska testified that it was the patient who made sexual
23 advances on Dr. Bahureska. Moreover, the evidence is undisputed that after the alleged
24 incident, the patient went on to have a stress test in Dr. Bahureska's office. According to Dr.
25 Bahureska's nurse, the patient did not act unusually or any differently than when she had
26 walked into the office. She underwent a stress test in normal fashion.

Finally, this Board's Findings of Fact do not adequately address the DNA issue. In
essence, the DNA is negative. It does not substantiate the allegations. Because of the negative

1 DNA results, it is apparent that the police and County Attorney decided not to prosecute this
2 case. The crux of the matter is the DNA exonerates Dr. Bahureska and has resulted in a non-
3 prosecution of these allegations. The Board must deal with this fact in its findings.

4 Overall, the evidence is insufficient to support any probation. This is a case of Dr.
5 Bahureksa's word against the patient's word. The physical evidence cited by the patient fails
6 to support the patient's claims. Dr. Bahureksa has, at this Board's order, undergone evaluations
7 by two medical professionals, neither of whom found substantiation for the charges.

8 Under these circumstances, the evidence simply does not support the probation, and that
9 penalty is excessive.

10 **II. THERE WAS IRREGULARITY IN THE BOARD PROCEEDINGS AND AN**
11 **ABUSE OF DISCRETION**

12 **A. THIS BOARD SHOULD HAVE CONTINUED ITS INVESTIGATION, AND IT WAS AN**
13 **ABUSE OF DISCRETION TO IMPOSE PROBATION**

14 It is submitted this Board understood that the evidence in this case is far from clear and
15 that what this Board wanted to do was continue to investigate by monitoring Dr. Bahureksa and
16 by evaluating his character. This is exactly what the Board could have and should have done.

17 The entire transcript of the December 9 hearing is attached hereto as Exhibit B. It is
18 apparent that this Board wanted to further investigate this case while imposing conditions upon
19 Dr. Bahureska. The Board received legal advice, however, that it could not impose conditions
20 without a probation. Therefore, it appears from the transcript that most of the Board
21 grudgingly voted to impose probation.

22 Whether the Board's belief about imposing conditions on a doctor's practice outside the
23 context of a probation is true or false (that issue will be addressed below), that is not a reason
24 to make a finding that Dr. Bahureska engaged in unprofessional conduct. That is, even if the
25 Board has concerns about monitoring Dr. Bahureska's practice, it is an abuse of discretion for
26 this Board to make a finding of fact where the evidence does not justify it.

1 Moreover, it is simply not true that the Board cannot monitor a physician and even
2 impose conditions on a physician's practice without probation. Pursuant to A.R.S. §32-1855,
3 "The Board on its own motion may investigate any information that appears to show that an
4 osteopathic physician and surgeon is or may be guilty of unprofessional conduct." This statute
5 itself does not define what an investigation is, but the statute leaves it to the Board's discretion.

6 A.R.S. §32-1855 specifies that the Board may interview the physician and also that the
7 Board may require the physician to undergo any combination of medical, physical or mental
8 examinations the Board finds necessary to determine the physician's competence. Certainly,
9 pursuant to this statute, the Board could employ someone to monitor Dr. Bahureska's practice,
10 to audit his charts, to require Dr. Bahureska to be familiar with "a cognitive/behavioral risk
11 management workbook" to test Dr. Bahureska on that workbook, to participate in CME and to
12 test Dr. Bahureska on the CME and the like. In short, this Board could, pursuant to A.R.S.
13 §32-1855, accomplish all the conditions that the Board set forth in its probation pursuant to an
14 investigation under the statute.

15 A.R.S. §32-1855.01 details further powers that this Board has in conducting
16 investigations. The Board has the power of subpoena. The Board may copy records at Dr.
17 Bahureska's office, at Dr. Bahureska's expense. A.R.S. §32-1855.01(A).

18 Certainly, under these cited statutes, this Board could have imposed the restrictions set
19 forth in Dr. Bahureska's probation as a way of investigating this case. Indeed, such an
20 investigation is the fairest action this Board can take in this case. The Board is understandably
21 concerned regarding the allegations. However, Dr. Bahureksa has always denied the charges,
22 and, as noted, the physical evidence and other evidence is unresponsive of the charges.

23 While it is certainly conceivable that one might have lingering questions, the best way
24 to answer those questions is in the context of a continuing investigation--not a rush to
25 judgment. An investigation that gives the Board the full opportunity to evaluate Dr.
26 Bahureksa's practice, to monitor him, to require audits and to put him through testable CME

1 will provide this Board with valuable information to assess Dr. Bahureksa's character and
2 practice. In all fairness to Dr. Bahureksa, and given the state of the evidence, such an
3 investigation is the only fair way to base future Board action.

4 **III. REQUEST FOR STAY; REQUEST TO HAVE ORDER REMOVED FROM**
5 **BOARD WEBSITE**

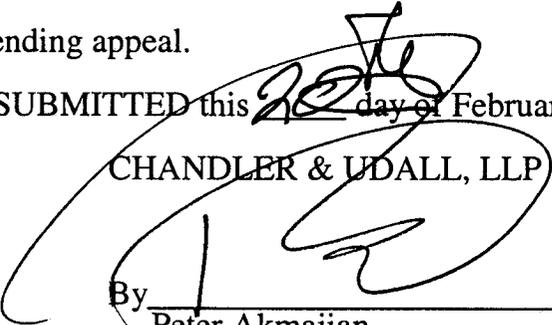
6 Dr. Bahureksa is contesting the Board's order and plans to appeal. The order, therefore
7 is not final. It is hereby requested that the order be stayed pending the completion of any
8 appeal. It is also requested that this Board remove the order from the Board website. The order
9 has already harmed Dr. Bahureksa's practice because he has been informed that he is being
10 terminated by an important insurance provider. It is unfair to keep the order in effect and to
11 keep it published on the website when the order is being appealed and is not final.

12 **IV. CONCLUSION**

13 For the foregoing reasons, this Board should vacate its Findings of Fact, Conclusions
14 of Law and Probationary Order. This Board should continue to investigate the above-
15 referenced matter for not less than six months. After this investigation is completed, this Board
16 should then hold a final investigative hearing at which time this Board should then decide upon
17 the appropriate course of action. Further, this Board should stay its order and remove the order
18 from the Board website, pending appeal.

19 RESPECTFULLY SUBMITTED this 20th day of February, 2007.

20 CHANDLER & UDALL, LLP

21 By 

22 Peter Akmajian
23 Attorneys for Budi Bahureksa, D.O.

CHANDLER & UDALL, LLP
4801E. BROADWAY BLVD., SUITE 400
TUCSON, ARIZONA 85711-3609
(520) 623-4353

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

COPY of the foregoing mailed this
20 day of February, 2007, to:

Jack Confer
Arizona Board of Osteopathic Examiners
9535 E. Doubletree Ranch Road
Scottsdale, AZ 85258-5539

Blair C. Driggs, Esq.
Office of the Attorney General
1275 W. Washington
Phoenix, AZ 85007-2997

By 