BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

IN MEDICINE AND SURGERY

IN THE MATTER OF: **RICHARD A. MICKLE, D.O.** Holder of License No. **2767** For the practice of osteopathic medicine in the State of Arizona	**Case No. 3784** **CONSENT AGREEMENT FOR DECREE OF CENSURE AND ORDER OF PROBATION**

By mutual agreement and understanding, the Arizona Board of Osteopathic Examiners (hereafter "Board") and Richard A. Mickle, D.O. (hereinafter "Respondent"), the parties, hereto agree to the following disposition to this matter.

1. Respondent acknowledges that he has read this Consent Agreement and Order; and, Respondent is aware of and understands the content of this document.

2. Respondent understands that by entering into this Consent Agreement and Order, he voluntarily relinquishes any rights to a hearing on the matters alleged as grounds for Board action or to seek judicial review of the Consent Agreement and Order in state or federal court.

3. Respondent understands that this Consent Agreement and Order will not become effective unless approved by the Board and signed by its Executive Director.

4. Respondent further understands that this Consent Agreement and Order, once approved and signed, shall constitute a public record which will be disseminated as a formal action of the Board.

5. Respondent, without admitting responsibility, acknowledges and accepts the imposition of the statement of facts and conclusions of law contained in the Consent Agreement and Order.

. . .

6. All admissions made by Respondent are solely for final disposition of this matter and any subsequent administrative proceedings or litigation involving the Board, Respondent and the State of Arizona; and, therefore, said admissions by Respondent are not intended for any other purpose or administrative regulatory proceeding or litigation in another state or federal court.

7. Respondent acknowledges and agrees that upon signing and returning this document (or a copy thereof) to the Board's Executive Director, he may not later revoke or amend any part of the Consent Agreement and Order, without first obtaining Board approval.

REVIEWED AND ACCEPTED THIS 27 DAY OF November 2007.

Richard A. Mickle, D.O., Respondent

Bruce D. Crawford, Counsel for Respondent

JURISDICTIONAL STATEMENTS

1. The Board is empowered, pursuant to A.R.S. § 32-1800 *et seq.* to regulate the licensing and practice of osteopathic medicine in Arizona.

2. The Board has the authority to informally dispose by stipulation, agreed settlement, consent order or default pursuant to A.R.S. § 41-1092.05(F)(5).

3. Respondent holds license No. 2767 to practice osteopathic medicine in Arizona.

FINDINGS OF FACT

4. In late August 2006, the Board received information that the Respondent may have had difficulty completing follow-up care of a six-year old pediatric patient following a tonsillectomy.

5. In addition, during the same time period, the Board received information that the Respondent had voluntarily resigned his surgical privileges at several east valley

hospitals following a severe surgical complication with a patient during a non-emergent tracheotomy on or around August 16, 2006.

6. In both cases, concerns were raised related to Respondent's record keeping as to signed consents and follow-up contact and care.

7. The Board voted in public session on November 10, 2007, to enter into a Stipulation and Consent Order.

CONCLUSIONS OF LAW

1. Pursuant to A.R.S. § 32-1800, *et seq.*, the Arizona Board of Osteopathic Examiners in Medicine and Surgery has subject matter and personal jurisdiction in this matter.

2. The conduct and circumstances described in paragraphs 4 through 6 above, if proven true, could constitute unprofessional conduct as defined in the following paragraphs of A.R.S. § 32-1854:

> (6) 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.
>
> (38) Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so.

ORDER

NOW, THEREFORE, IT IS ORDERED AND AGREED AS FOLLOWS:

1. Respondent is hereby issued a Decree of Censure related to the matters set forth in paragraphs 4, 5 and 6 of the above "Findings of Fact."

2. Respondent is hereby placed on Probation for a period of one (1) year from the effective date of this Order, with the following terms and conditions as set forth herein.

3. Effective immediately, and for the next twelve (12) months, Respondent shall not perform any surgical procedures other than as set forth in the following paragraphs.

. . .

This shall not prevent Respondent from providing clinical care in the hospital or office setting, nor shall it preclude usual and customary clinical procedures.

a. Respondent shall not perform any major surgical procedures as the sole primary surgeon. Respondent shall have an Assistant Surgeon experienced in such procedures present at all times. The following are considered major surgeries:

- Laryngectomy
- Radical neck dissection
- Myocutaneous or free flap formation
- Glomus jugulare tumor resection
- Commando surgeries
- Thyroid and parathyroid surgeries
- Parotidectomy

b. Respondent may perform all other hospital or outpatient surgical procedures as a primary surgeon. This includes all usual and customary ENT surgical procedures performed in a hospital or outpatient surgical facility which are not customarily considered to be major surgeries.

c. Respondent may perform all routine office-based procedures.

d. Respondent will immediately consult with another qualified ENT physician/surgeon related to all post-operative surgical patients who contact him or his office directly about possible postoperative complications. If Respondent is contacted by an Urgent Care, Emergency Department or other hospital-based physician about such a patient, he shall immediately consult with another qualified ENT physician/surgeon. If such a patient requires further evaluation or treatment on an emergent basis, Respondent shall have another qualified ENT physician/ surgeon directly assist him with that evaluation or treatment. Respondent shall keep a log of

all such contacts and make it available for inspection by Board staff upon request.

e. Respondent shall immediately make arrangements with another qualified physician/surgeon to accept/take over the care of any and all pediatric patients who require hospitalization.

4. Within two (2) weeks of the date of this Agreement, Respondent shall hold an in-service with Respondent's office staff related to the importance of immediately informing Respondent about all contacts related to complications involving post-operative patients.

5. As soon as possible, but in no event later than twelve (12) months from the date of this Agreement, Respondent shall attend an in person, hands-on 12 hour CME course (or courses) on ENT surgery and postoperative complications, including bleeding. This shall be in addition to the CME normally required for license renewal. The CME course(s) must be pre-approved by the Executive Director.

6. The Board or its designee shall determine Respondent's compliance and/or noncompliance with this Order. If the Board or its designee determines that Respondent has been non-compliant with any of the terms of this Order during the probationary period, the Board may lengthen or broaden the terms of probation or may order further disciplinary action.

7. Respondent shall provide a copy of this Order and any subsequent Orders to all facilities where Respondent is currently (or subsequently) employed as a physician and/or has (or subsequent receives) privileges to engage in the practice of medicine. Respondent shall continue to make the aforementioned disclosure and provide copies of this Consent Order until the expiration of this Order.

8. Respondent shall also, as part of his probation: (A) submit to and cooperate in any independent medical or psychological evaluation that is ordered by the Board for Respondent and conducted by the Board's designated physician and/or psychologist which shall be paid for by Responent; and (B) appear before the Board, upon receipt of a request by

written or telephonic notification from the Board's Executive Director which shall be given at least ten (10) days prior to the Board meeting.

9. In the event Respondent moves and ceases to practice medicine in Arizona, he shall given written notice to the Board of his new residence address within twenty (20) days of moving; and, the terms and duration of probation may be stayed by the Board until Respondent returns to practice medicine in Arizona.

10. Respondent shall reimburse the Board for all expenses associated with the continued monitoring of this matter.

11. Respondent shall continue to meet all licensing requirements such as continuing medical education and renewal requirements including applicable fees pursuant to A.R.S. § 32-1825.

12. Respondent's failure to comply with the requirements of this Order shall constitute unprofessional conduct as defined at A.R.S. § 32-1854(26), as amended, and may be considered as grounds for further disciplinary action (*e.g.*, suspension or revocation of license) in the event that Respondent fails to comply with any of the requirements of this Order.

ISSUED THIS 29TH DAY OF NOVEMBER 2007.

STATE OF ARIZONA BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

By _____
Jack Confer, Executive Director

Original "Consent Agreement for Decree of Censure and Order of Probation" filed this 29TH day of NOVEMBER, 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 "Consent Agreement for Decree of Censure and Order of Probation" sent via certified mail, return receipt requested, this 29TH day of NOVEMBER 2007 to:

Richard A. Mickle, D.O.
1134 East University, #102
Mesa, AZ 85203

Copies of the foregoing "Consent Agreement for Decree of Censure and Order of Probation" sent via regular mail this 29TH day of NOVEMBER 2007 to:

Blair Driggs, AAG
c/o ARIZONA BOARD OF OSTEOPATHIC EXAMINERS
9535 East Doubletree Ranch Road
Scottsdale, Arizona 85258

Bruce Crawford, Esq.
Crawford & Kline, P.L.C.
1920 E. Southern Avenue – Ste. 101
Tempe, AZ 85282-7537