BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

IN MEDICINE AND SURGERY

IN THE MATTER OF:	**Case No.: 3436**
BUDI BAHUREKSA, D.O. Holder of License No. **3901**	**DENIAL OF REQUEST FOR REHEARING OR REVIEW**
For the practice of osteopathic medicine in the State of Arizona	

On March 3, 2007, the Arizona Board of Osteopathic Medicine ("Board") considered Budi Bahureksa's, D.O. ("Respondent") Request for Rehearing; Request for Stay. Respondent was present and represented by his legal counsel, Peter Akmajian, Esq. Assistant Attorney General Blair Driggs was present and provided legal advice to the Board during the open and executive sessions.

After hearing arguments, the Board determined that Respondent had not come forth with any information to indicate that an irregularity had occurred during the investigative hearing wherein Respondent was sanctioned. Nor had Respondent shown that one of the seven causes, pursuant to A.A.C. R4-22-106(D) materially affected his rights at the time of the initial hearing and thus has not satisfied the requirements necessary to grant a rehearing or review of their earlier decision.

THEREFORE, IT IS ORDERED that the Request for Rehearing is hereby **DENIED** and the Board's previous decision is upheld.

ISSUED THIS 20TH DAY OF MARCH 2007.

ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

By:_____
Jack Confer, Executive Director

NOTICE OF RIGHT TO APPEAL

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

Original "Denial of Request for Rehearing"
filed this 20th day of March, 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 "Denial of Request for Rehearing"
send by certified mail, return receipt requested
this 20th day of March, 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 "Denial of Request for Rehearing"
sent via regular mail/hand delivered this 20th day of March, 2007 to:

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

Kathy Fowler

RECEIVED
FEB 21 2007
AZ OSTEOPATHIC BOARD

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Peter Akmajian
Attorneys for Budi Bahureksa, D.O.

BEFORE THE BOARD OF OSTEOPATHIC EXAMINERS

IN MEDICINE AND SURGERY

IN THE MATTER OF: **BUDI BAHUREKSA, D.O.** Holder of License No. **3901** For the practice of osteopathic medicine in the State of Arizona.	NO. 3436 **REQUEST FOR REHEARING; REQUEST FOR STAY**

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

1. Irregularity in the proceedings of the Board, and the Board's order, and there was an abuse of discretion, which deprived Dr. Bahureksa of a fair hearing;

2. Excessive penalty;

3. Error in the admission or rejection of evidence or other erros of law occurring at the hearing or during the progress of the proceedings;

4. The Board's findings of fact and decision is not justified by the evidence and is contrary to law.

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

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

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

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

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

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

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

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RESPECTFULLY SUBMITTED this 20th day of February, 2007

CHANDLER & UDALL, LLP

By _____
Peter Akmajian
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MEMORANDUM OF POINTS AND AUTHORITIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. CONCLUSION

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

RESPECTFULLY SUBMITTED this 20th day of February, 2007.

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

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