BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of	Docket No. **07A-30154-MDX**
LeROI A. BAEZ, M.D.,	Case No. MD-07-0126A
Holder of License No. 30154 For the Practice of Allopathic Medicine in the State of Arizona	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER PROBATION**

On August 8, 2007 this matter came before the Arizona Medical Board ("Board") for oral argument and consideration of the Administrative Law Judge ("ALJ") Brian Brendan Tully's proposed Findings of Fact and Conclusions of Law and Recommended Order involving LeRoi A. Baez, M.D. ("Respondent"). Respondent was notified of the Board's intent to consider this matter at the Board's public meeting. Respondent did appear and was represented by counsel, Daniel P. Jantsch. The State was represented by Assistant Attorney General Anne Froedge. Christine Cassetta, Assistant Attorney General with the Solicitor General's Section of the Attorney General's Office provided legal advice to the Board.

The Board having considered the ALJ's recommended decision and the entire record in this matter hereby issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Arizona Medical Board ("Board") is the authority for licensing and regulating the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of License No. 30154 for the practice of allopathic medicine in the State of Arizona. He practices gastroenterology in Tucson, Arizona.

3. On or about March 2, 2007 A.C. filed a written complaint against Respondent with the Board alleging Respondent had sexually assaulted her at his office on March 1, 2007.

4. A.C. has known Respondent since 2002. A.C. was a patient of Respondent for approximately two to three years. He performed an endoscopy for her in September 2004. She

visited his office on one occasion, and they had hallway consultations at various times at St. Joseph's hospital, where Respondent had privileges and A.C. works as a personal care technician.

5. A.C. and Respondent had a "flirting" relationship. A.C. has been in a long term relationship. Respondent is married and met his wife in medical school.

6. In late November and December of 2005, A.C. had worked part-time for Respondent doing filing work at his office. On or about December 22, 2005 Respondent paid A.C. by check the sum of $126.50 for her work. After that date she no longer worked for Respondent.

7. On March 1, 2007 A.C. telephoned Respondent on his cell phone because she was experiencing severe abdominal pain for several months. Respondent agreed to see her at his office that afternoon.

8. Respondent commonly gave his cell phone number to patients and employees.

9. On March 1, 2007 at approximately 5:45 p.m, A.C. arrived at Respondent's office. Respondent unlocked the back office door, admitted A.C. and then locked the office door.

10. A.C. told Respondent that her primary care physician had recommended she undergo a colonoscopy to investigate her condition. Respondent performed an examination of A.C. and he also recommended she undergo a colonoscopy to determine the source of her severe pain. A.C. asked Respondent for a referral because she was uncomfortable having him perform the procedure since they worked in the same area of the hospital.

11. Respondent had been supplying A.C. with free samples of Prevacid because the medication was expensive. He commonly did that for other patients, especially hospital employees. After the examination on March 1, 2007 A.C. followed Respondent to a closet where Respondent removed a quantity of Prevacid and gave the samples to A.C.

12. After giving A.C. the samples, the next occurrence becomes a "he said/she said." A.C. testified that Respondent's demeanor changed immediately and he forcibly made sexual

advanced towards her. A.C. contends that Respondent aggressively kissed her on the mouth and groped at her breasts. A.C. testified that she pleaded with Respondent to stop. A.C. testified that she did not yell, but did ask Respondent to stop. She said that he eventually did stop, and then unlocked the office back door so that she could leave the office.

13. A.C. contends that Respondent caused her lip to swell and that she received a bruise to her right upper arm.

14. Respondent testified that the sexual advances did not occur.

15. On March 2, 2007 A.C. reported the incident to hospital administration at St. Joseph's hospital and the Tucson Police Department. No criminal charges have been filed against Respondent in this matter. She also filed a written complaint with the Board.

16. Also on March 2, 2007 the Board's investigator, Celina Shepard, conducted a telephonic interview of A.C. after receiving her written complaint.

17. On March 7, 2007 A.C. was interviewed by Board Staff Marlene Young and Kelly Sems, M.D. She was again interviewed by Ms. Young on March 8, 2007.

18. On March 8, 2007, Respondent was interviewed by Ms. Young and Mark Nanney, M.D., the Board's chief medical consultant at the time. Respondent's attorney at the time, David Hill, also was present.

19. On March 8, 2007, Ms. Young conducted an investigational interview with Respondent's accountant Dormi Torrey who stated she was working in Respondent's office the evening of the alleged incident, but that she was in another area of the office. At the hearing, Ms. Torrey testified that she did not know that anyone, other than Respondent, was in the office while she was there. She heard Respondent speaking, but she assumed that he was dictating. She did not hear or see A.C. while she was working in the office that evening.

20. Ms. Torrey testified that she telephoned Respondent on his cell phone at 5:45 p.m., which is documented in his cell phone records. Ms. Torrey said that she was in the parking

lot of Respondent's office and, although she had keys for the office, she asked him to open the office's door.

21. Mr. Torrey said Respondent shortly after the telephone call opened the door for her. Ms. Torrey's testimony was that she then spent approximately 15 minutes discussing matters with Respondent before she proceeded to work on her projects. Given the totality of the evidence, that 15 minute meeting would have been during the time that A.C. presented to Respondent's office.

22. On March 8, 2007 the Board, through its Executive Director, issued an Interim Order (Evaluation at Sexual Recovery Institute), a Confidential Investigative Order, in Case No. MD-07-0126A. The Interim Order required Respondent to "undergo an evaluation within 10 days from the date of this Order at Sexual Recovery Institute (SRI)."

23. On March 15, 2007 Dr. Philip Balch, a psychologist, performed a two-hour psychosexual risk assessment of Respondent at the request of his criminal defense attorney.

24. At the request of Respondent's criminal defense attorney, Dr. Balch did not interview Respondent about the alleged sexual assault, which is something Dr. Balch would have normally done. Dr. Balch also did not have access to any documents pertaining to the alleged assault.

25. After performing his evaluation, Dr. Balch opined that Respondent "presents with little, if any loading on any of these factors and little, if any, risk based on my work with him to be a risk to the community or to anybody in the community."

26. Respondent timely reported to SRI for a psycho-sexual evaluation on March 19, 2007. Respondent completed his evaluation at SRI on March 22, 2007.

27. During the SRI evaluation, based upon the advice of his then legal counsel, Respondent refused to give any insight into what would have motivated A.C. to claim to have been

assaulted if it did not happen. Apparently Respondent felt that such information, if disclosed, could be used against him in legal proceedings.

28. On March 23, 2007 Respondent telephoned SRI staff admitting that there was more to the story and requested a meeting, which was scheduled that afternoon. Shortly before the scheduled meeting, Respondent telephoned SRI staff and stated that he would not disclose the withheld information and cancelled the meeting.

29. On March 23, 2007 Kathleen Muller of the Board's Staff sent an email to SRI inquiring into the status of Respondent's evaluation. Cecilia Quigley, M.A., the Administrative Director of SRI, responded as follows:

> They are still evaluating-but there are definitely some concerns. Even though it is still developing it is clear that we will not recommend immediate return to work. (Emphasis in the original).

30. On March 26, 2007 the Board's Executive Director, Timothy C. Miller, J.D., issued Interim Findings of Fact, Conclusions of Law and Order for Summary Suspension of License against Respondent's medical license in Case. No. MD-07-0126A.

31. On March 29, 2007 Omar Minwalla, Psy.D. and Lisa Meneshian, MPH, Ph.D., issued a SRI Psychosexual Evaluation/Professional Assessment for Respondent. The evaluators made the following conclusion:

> ...it is the opinion of the examiner that Dr. Baez is withholding relevant information that makes it difficult to determine what course of action would be appropriate. It is suspected that this information may indicate that Dr. Baez has engaged in unethical, illegal and/or otherwise inappropriate behavior, but this is unsubstantiated.

32. The SRI evaluators report contains the following recommendations:

> At this time, there is certain indication that Dr. Baez is intentionally withholding pertinent information that would be necessary to best determine his fitness for duty as a physician and any treatment needs or practice restrictions. Given this, it is not recommended that Dr. Baez continue to practice under any circumstances, until such time that he decides to be more forthcoming with information that is pertinent and relevant to

> these serious allegations of sexual assault. Only then can appropriate recommendations, further investigation, and options for any necessary treatment be legitimately determined.

33. The SRI evaluators felt that consideration should be given to Respondent having had a least two affairs. Mrs. Baez credibly testified that those affairs occurred when she and Respondent were not in a committed relationship. She stated that she was also dating at the time and assumed during that period of time that Respondent was also dating others. Respondent and Mrs. Baez later became committed and eventually married.

34. Bradley R. Johnson, M.D. testified as an expert witness for Respondent. Dr. Johnson specializes in psychiatry and sub-specializes in general psychiatry, child psychiatry and forensic psychiatry.

35. Dr. Johnson performed an evaluation of Respondent on April 7 and 10, 2007.

36. During Dr. Johnson's evaluation, Respondent speculated that he believed that A.C. made the allegations against him due to her feeling rejected by him. While that may or may not be true, such speculation does not seem to be of the type that could be used against Respondent in a legal proceeding as he indicated to SRI's evaluation team.

37. Dr. Johnson opined that he does not believe Respondent suffers from a psychosexual disorder. Dr. Johnson concluded that "there's no evidence that he is at any imminent risk or likely a danger to society."

38. At the hearing Respondent gave sworn testimony concerning a check in the amount of $500.00 dated December 29, 2005 from himself to A.C. A copy of the check was admitted into evidence. The memo line for the admitted check reads "Loan." Respondent testified the photocopied check accurately reflected the check given to A.C. During cross examination, Respondent denied that the word "Loan" had been added after the fact.

39. At the hearing, A.C. also gave sworn testimony concerning the check. She testified she had not received a check with the "Loan" notation on it. She claims that the check

was a Christmas bonus given to all employees. The check is dated after Christmas Day, but it is not clear when the check was given to A.C.

40. The hearing was originally concluded on May 24, 2007. However, the record was reopened at the request of counsel on June 11, 2007. The reason for reopening the record was a disclosure from Respondent's counsel that Respondent had given false testimony and had submitted a false copy of the check.[1] In documentary evidence admitted into evidence on June 12, 2007, Respondent admitted that the check originally read "Payroll and wages" in the memo, but that he subsequently altered the check, or a photocopy of it, by adding the word "Loan" in place of "Payroll and wages."

41. Part of the documentary evidence admitted on June 11, 2007 attempts to show payment to Respondent from A.C. That evidence was not presented during the hearing on May 23-24, 2007, when witnesses could have given testimony about such documentation. Without such testimony and given the disclosure of Respondent's false testimony under oath, such documentation about A.C. making payment to Respondent will not be considered.

42. As a result of the disclosure that Respondent gave false testimony under oath at the hearing, he is found to lack any credibility as a witness.

43. A.C. had been a patient of Respondent's, she was not charged a co-pay by Respondent for treatment, she had briefly worked for him, she worked at the same hospital as Respondent and she received free samples of medication from Respondent, which saved her a considerable amount of money by not purchasing the medication. On March 1, 2007 Respondent had just given her more samples of the medication. There is no clear motive for A.C. to make up the sexual assault allegation.

[1] The disclosure of Respondent's false testimony under oath and his submission of false documentary evidence negatively affect Respondent's credibility as a witness in this matter. Any disciplinary action or criminal prosecution for his having such false testimony is outside the scope of these proceedings.

44. A.C.'s account of the incident is found to be more credible than Respondent's account.

FINDING OF IMMEDIATE EFFECTIVENESS

45. It is necessary for this decision to take immediate effect because a rehearing or review is contrary to the public interest. A.A.C. R4-16-102(B).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent and the subject matter in this case.

2. The Board has the burden of proof in this matter. A.R.S. § 41-1092.07(G)(2). The standard of proof is preponderance of the evidence. A.A.C. R2-19-119(A). "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."[2] A preponderance of the evidence is "evidence which is of greater weight or more convincing than evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not."[3]

3. Respondent committed unprofessional conduct pursuant to A.R.S. § 32-1407(27)(z).

4. The evidence of record supports the Board's action of summarily suspending Respondent's medical license to protect the public health, safety, and welfare, pursuant to A.R.S. § 32-1451(D).

5. Respondent should be assessed the costs of the formal hearing in this matter. A.R.S. § 32-1451(M).

[2] Morris K. Udall, Arizona Law of Evidence § 5 (1960).
[3] Black's Law Dictionary at page 1064 (6th ed. 1990).

ORDER

Based upon the Findings of Fact and Conclusions of Law as adopted, the Board hereby enters the following Order:

1. The summary suspension of Respondent's License No. 30154 is lifted as of the effective date of this Order.

2. Respondent is placed on probation until further Order of the Board pursuant to the following terms and conditions:

A. All of Respondent's interactions with female patients in all settings including, but not limited to, office, hospital and clinic must take place in the presence of a female licensed health care provider ("Chaperone") who has an unencumbered view of the patient. The Chaperone must be a physician assistant, registered nurse, or licensed practical nurse. Respondent shall instruct Chaperone to immediately report any inappropriate behavior to Respondent and the Board. Respondent shall instruct Chaperone to document her presence by signing, dating and legibly printing her name on each patient's chart **at the time of the interaction**. Board Staff may perform random periodic chart reviews to ensure compliance with this Order.

B. Respondent shall, at his own expense, present for and undergo a psycho-sexual evaluation within 30 days from the date of this Order at a Board approved facility. The evaluating facility shall provide a written confidential evaluation report to the Board or authorized Board staff. The evaluating facility is conducting the evaluation solely for the benefit of the Board and the evaluation report is prepared solely for the benefit of the Board. Therefore, the evaluating facility is not treating Respondent as a patient. Respondent shall authorize the release to Board Staff or the evaluating facility, upon request, all records relating to Respondent's previous medical or psychological history. Failure to cooperate with or complete any portion of the evaluation is a violation of this Order and may result in disciplinary action.

C. Respondent shall obey all federal, state, and local laws and all rules governing the practice of medicine in Arizona.

D. In the event Respondent should leave Arizona to reside or practice outside the State or for any reason should Respondent stop practicing medicine in Arizona, Respondent shall notify the Executive Director in writing within ten days of departure and return or the dates of non-practice within Arizona. Non-practice is defined as any period of time exceeding thirty days during which Respondent is not engaging in the practice of medicine. Periods of temporary or permanent residence or practice outside Arizona or of non-practice within Arizona, will not apply to the reduction of the probationary period.

3. If the evaluating facility makes no recommendation for continued monitoring the Executive Director may terminate the probation. If the evaluating facility makes recommendations for continued monitoring, treatment or other recommendation Respondent shall comply with those recommendations as approved by Board Staff.

Dated this 9th day of August, 2007.

(SEAL)

ARIZONA MEDICAL BOARD

By: _____
Timothy C. Miller, J.D.
Executive Director

Original of the foregoing filed this 9th day of August, 2007, with:

Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, AZ 85258

Copy of the foregoing filed this 9th day of August, 2007, with:

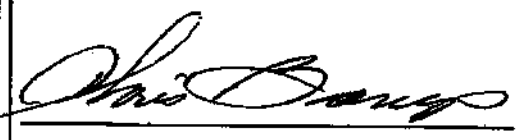
Cliff J. Vanell, Director
Office of Administrative Hearings
1400 W. Washington, Ste. 101
Phoenix, AZ 85007

Executed copy of the foregoing mailed by US Mail this 9th day of August, 2007, to:

Daniel P. Jantsch
Olson, Jantsch & Bakker
7243 N. 16th St.
Phoenix, Arizona 85020

LeRoi A. Baez, M.D.
(Address of record)

Dean Brekke
Assistant Attorney General
Office of the Attorney General
CIV/LES
1275 W. Washington
Phoenix, Arizona 85007



BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **LeROI BAEZ, M.D.** Holder of License No. **30154** For the Practice of Allopathic Medicine In the State of Arizona.	Board Case No. MD-07-0126 **AMENDMENT TO FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER FOR PROBATION DATED AUGUST 9, 2007.**

At its public meeting on August 8-9, 2007 the Arizona Medical Board ("Board") considered the recommended Order of the Administrative Law Judge in the matter of LeRoi Baez, M.D. and issued an Order ("August 2007 Order") placing Respondent on probation requiring that he: have a chaperone for all interactions with female patients and undergo a psycho-sexual evaluation within thirty days of the date of the Board's Order. The August 2007 Order also provided that, if the evaluating facility made no recommendations for continuing monitoring, the Executive Director terminate the probation and, if the evaluating facility made recommendations for continued monitoring, treatment or any other recommendation, that Respondent comply with those recommendations as approved by Board Staff.

Respondent complied with the August 2007 and underwent the psycho-sexual evaluation. The evaluating facility recommended the Board lift the chaperone requirement; and order Respondent to undergo continued psychiatric treatment and psychotherapy as recommended by the evaluating facility.

ORDER

IT IS HEREBY ORDERED that:

The Order portion of the August 2007 Order is amended to as follows:

1. Respondent is placed on Probation until further Order of the Board pursuant to the following terms and conditions:

A. Respondent shall enter/continue treatment with a Board-staff approved psychiatrist and psychotherapist and shall comply with any and all treatment recommendations, including taking any and all medications prescribed by psychiatrist. Respondent shall instruct the treating psychiatrist and psychotherapist to submit quarterly written reports to Board Staff regarding diagnosis, prognosis, current medications, and recommendation for continuing care and treatment. The reports shall be submitted on or before the 15th day of March, June, September and December of each year, beginning December, 2007. Respondent shall provide the psychiatrist and psychotherapist with a copy of this Order and the August 2007 Order. Respondent shall pay the expenses of all the care and be responsible for paying for the preparation of the quarterly reports. At the expiration of ***one year*** or anytime thereafter Respondent may submit a written request to the Executive Director requesting he terminate the requirement that Respondent remain in treatment with a psychiatrist and psychotherapist. The decision to terminate will be based in part upon the treating psychiatrist's recommendation for continued care and treatment.

B. Respondent shall obey all federal, state, and local laws and all rules governing the practice of medicine in Arizona.

C. In the event Respondent should leave Arizona to reside or practice outside the State or for any reason should Respondent stop practicing medicine in Arizona, Respondent shall notify the Executive Director in writing within ten days of departure and return or the dates of non-practice within Arizona. Non-practice is defined as any period of time exceeding thirty days during which Respondent is not engaging in the practice of medicine. Periods of temporary or permanent residence or practice outside Arizona or of non-practice within Arizona, will not apply to the reduction of the probationary period

DATED this 18th day of October, 2007.

ARIZONA MEDICAL BOARD

By _____
TIMOTHY C. MILLER, J.D.
Executive Director

ORIGINAL of the foregoing filed this 18TH day of October, 2007 with:

The Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

Executed copy of the foregoing mailed by U.S. Mail this 18TH day of October, 2007 to:

Daniel P. Jantsch
Olson, Jantsch & Bakker
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LeRoi A. Baez, M.D.
(Address of record)

Sue Dana