

1 BEFORE THE BOARD OF MEDICAL EXAMINERS
2 IN THE STATE OF ARIZONA

3
4 In the Matter of
5 **DANIEL DE LA PAVA, M.D.**

6 Holder of License No. **11945**
7 For the Practice of Medicine
8 In the State of Arizona.

Case No. MD-00-0139

INVESTIGATION NO. 13571

**REVISED
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

(Letter of Reprimand/Order of Probation)

9
10 **INTRODUCTION**

11 This matter was considered by the Arizona Board of Medical Examiners
12 ("Board") at its public meeting on October 25, 2000. Daniel De La Pava, M.D.,
13 appeared before the Board with legal counsel, Frederick Cummings of the firm of
14 White & Cummings, for the purpose of the Board conducting a formal interview,
15 pursuant to the authority vested in the Board by A.R.S. § 32-1451(G). After due
16 consideration of the facts and law applicable to this matter, the Board voted to issue
17 the following findings of fact, conclusions of law and order.

18 **FINDINGS OF FACT**

- 19 1. The Board is the duly constituted authority for the regulation and control
20 of the practice of allopathic medicine in the State of Arizona.
- 21 2. Dr. De La Pava is the holder of License No. 11945 for the practice of
22 medicine in the State of Arizona.
- 23 3. Board Investigation No. 13571 was initiated after the Board was notified,
24 pursuant to a complaint from a 69-year-old female patient. Investigation
25 revealed that the patient has a history of breast cancer and breast

1 surgery, and presented herself to Dr. De La Pava on July 13, 1998
2 regarding concerns involving the implant in her left breast.

3 4. Dr. De La Pava performed an evaluation and recommended that the
4 patient undergo a procedure to remove the implant and reconstruct the
5 breast with a left latissimus dorsi musculocutaneous flap.

6 5. Dr. De La Pava performed this procedure on July 24, 1998. The
7 postoperative period was somewhat uneventful. However, the patient
8 did mention that her breasts seemed much smaller after surgery.

9 6. On August 19, 1998, Dr. De La Pava indicated that the patient would
10 require a revision in the future to both decrease laterally and to increase
11 anteriorly.

12 7. On September 21, 1998, Dr. De La Pava noted that the patient's breast
13 was well healed but needed a second stage of reconstruction to obtain
14 the maximum results desired.

15 8. The patient was quite upset that the second-stage procedure had not
16 been explained to her previously, or prior to the July 24, 1998 surgery.
17 Dr. De La Pava failed to note appropriate informed consent.

18 9. Dr. De La Pava did not adequately describe an examination of the left
19 breast and the region of the apparent bubble nor did he fully discuss in
20 his notes what potential operative procedures were presented to the
21 patient and the basis for performing or not performing such. Also, Dr. De
22 La Pava used poor judgment and performed the wrong procedure.
23 There was no reason to have this procedure performed on a patient with
24 an adequate skin envelope and a pectoralis major muscle. Dr. De La
25 Pava performed the procedure poorly. He not only failed to mobilize the

1 flap completely but also excised good breast tissue during the procedure
2 and deformed the nipple areolar complex.

3 **CONCLUSIONS OF LAW**

- 4 1. The Board possesses jurisdiction over the subject matter hereof and
5 over Dr. De La Pava pursuant to A.R.S. § 32-1401 *et seq.*
- 6 2. The conduct and circumstances described above in paragraphs 3
7 through 9 constitute unprofessional conduct pursuant to A.R.S. § 32-
8 1401(25)(II) "Conduct that the Board determines is gross negligence,
9 repeated negligence or negligence resulting in harm to or death of a
10 patient."

11 **ORDER**

12 Based on the foregoing Findings of Fact and Conclusions of Law,
13 IT IS HEREBY ORDERED that:

- 14 1. A letter of reprimand be issued to Dr. De La Pava for the aforementioned
15 unprofessional conduct.
- 16 2. Dr. De La Pava be placed on Probation and that staff conduct an office
17 survey of the past five years of his breast reconstruction procedures within six (6) months
18 of the effective date of this Order. Based upon the office survey, the Board retains
19 jurisdiction to take additional disciplinary or remedial action.
- 20 3. Dr. De La Pava shall obtain twenty (20) hours of Board staff pre-approved
21 CME in work up and care of breast augmentation reconstruction surgery, in addition to the
22 CME requirements for license renewal, and provide staff with satisfactory evidence of
23 completion.
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RIGHT TO PETITION FOR REVIEW

Dr. De La Pava is hereby notified that he has the right to petition for a rehearing. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing must be filed with the Board's Executive Director within thirty (30) days after service of this Order and pursuant to A.A.C. R4-16-102, it must set forth legally sufficient reasons for granting a rehearing. Service of this Order is effective five (5) days after the date of mailing. If a motion for rehearing is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Dr. De La Pava.

Dr. De La Pava is further notified that the filing of a petition for rehearing is required to preserve any rights of appeal to the Superior Court that he may wish to pursue.

DATED this 9th day of January, 2001 (P)

BOARD OF MEDICAL EXAMINERS
OF THE STATE OF ARIZONA



By Claudia Foutz
CLAUDIA FOUTZ
Executive Director

ORIGINAL of the foregoing filed this 10 day of January, 2001, with: RH.

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

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EXECUTED COPY of the foregoing mailed by
Certified Mail this 11 day of January, 2000, to:

Daniel De La Pava, M.D.
13000 N. 103rd Avenue - Ste. 54
Sun City, AZ 85351

COPY of the foregoing mailed this
10 day of January, 2000, to:

Frederick Cummings, Esq.
White & Cummings
2920 E. Camelback Ste. 150
Phoenix, AZ 85016
Attorney for Respondent

COPY of the foregoing hand-delivered this
10 day of January, 2000, to:

Richard F. Albrecht, Esq., Assistant Attorney General
c/o Arizona Board of Medical Examiners
9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258
Counsel for the Board

