BEFORE THE ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

In the Matter of **STEVEN J. KING, P.A.,** Holder of License No. **2697** For the Performance of Health Care Tasks In the State of Arizona.	Case No. 08A-2697-PAB **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** (Decree of Censure and Probation)

On May 20, 2009, this matter came before the Arizona Regulatory Board of Physician Assistants ("Board") for oral argument and consideration of the Administrative Law Judge (ALJ) Thomas Shedden's proposed Findings of Fact and Conclusions of Law and Recommended Order. Steven J. King, P.A., ("Respondent") was not present, but was represented before the Board by legal counsel Michael Golder. Assistant Attorney General Emma Lehner Mamaluy represented the State. Chris Munns, Assistant Attorney General with the Solicitor General's Section of the Attorney General's Office, was available to provide independent legal advice to the Board.

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

FINDINGS OF FACT

1. Steven J. King holds license number 2697 for the performance of health care tasks in Arizona.

2. On October 22, 2008 the Arizona Board of Physician Assistants issued a Complaint and Notice of Hearing setting the above-captioned matter for hearing on December 18, 2008.

3. The Complaint alleges that in 2005 Mr. King committed acts of unprofessional conduct: (1) by stealing ophthalmoscopes from Banner Baywood Heart

Hospital (Board Investigation Number PA-05-0012A), and (2) by writing a 30-day prescription for Vicodin, a schedule III drug, at a time when Mr. King did not have Board approval to perform health care tasks under the supervision of the patient's physician and in that Mr. King did not have approval to prescribe controlled substances for more than 72 hours (Board Investigation Number PA-05-0034A).

4. The hearing was convened as scheduled on December 18, 2008 but did not conclude on that date and further hearing was held on February 2, 2009.

5. The State presented the testimony of Investigator Elle Steger; Mr. King was represented by counsel but did not appear personally or testify at the hearing because he is out of the country. Mr. King submitted an affidavit that was admitted into evidence over the objection of the State. See King's Exhibit 26. Although the affidavit was accepted into evidence it can be given very limited weight because Mr. King was not subject to cross-examination about the statements therein.

Theft of Ophthalmoscopes (PA-05-0012A)

6. In an interview with Board staff on July 24, 2008, Mr. King admitted that between January and June 2005 he stole between 12 and 15 ophthalmoscopes from Banner and sold these on the internet. See State's Exhibit 40 (transcript of Examination Under Oath conducted by the Board on July 24, 2008).

7. Mr. King paid Banner $9,321.28 in restitution.

8. Given the reported value of the ophthalmoscopes, $9,321.28 would cover the cost of 29 ophthalmoscopes, which is the number Banner could not account for when Mr. King's thefts were discovered.

Practicing Without Supervision and Vicodin Prescription (PA-05-0034A)

9. Mr. King admits that in October 2005 he wrote a prescription for Vicodin at a time when he did not have Board approval to perform health care tasks under the supervision of the patient's physician. See State's Exhibit 40.

10. In October 2005 Mr. King was working for Dr. Rodney Iancovici. According to Mr. King and Dr. Iancovici, Dr. Iancovici's office manager was supposed to turn in the required paperwork, but did not do so in a timely manner because there was not enough money in the account to cover the expense. Once Mr. King learned of the problem he personally took the required paperwork to the Board for approval.

11. A physician's assistant must receive the Board's approval of his supervising physician before engaging in professional activity (i.e., he may not begin work based on submission of the paperwork, but must wait until he is notified of approval). See State's Exhibits 40 and 25 (letter from Mr. King dated October 24, 2005).

12. Mr. King has explained that based on his work with cardiology patients, he thought that the number of Vicodin tablets was within his authority to prescribe, although he knew that it was a month's supply and, also that he did not originally know for how long the prescription would be.

13. At the time Mr. King wrote the prescription for Vicodin, the patient had regularly been receiving 30-day prescriptions written by Dr. Iancovici. Ms. Steger testified that there was no evidence in the Board's files to suggest that the patient suffered any harm as a result of Mr. King's action, which information would typically be in the file had any harm occurred.

14. The Board has adopted the Arizona Medical Board's Substantive Policy Statement 9 (SPS 9), which is an advisory policy with respect to complaints and the appropriate level of discipline. See State's Exhibit 50.

15. Under SPS 9, Revocation is appropriate for a violation of the Medical Practice Act that involves severe moral turpitude or ethical misconduct or when the physician's assistant is unable to safely practice and other remedial actions have failed or are unlikely to succeed. Moral turpitude usually connotes a dishonest intent. See State's Exhibit 50.

16. The State requests that Mr. King's license be revoked.

CONCLUSIONS OF LAW

1. The Board bears the burden of persuasion. See A.R.S. § 41-1092.07(G)(2).

2. The standard of proof is that of the preponderance of the evidence. See A.A.C. R2-19-119. A preponderance of the evidence is "[e]vidence which is of greater weight or more convincing than the 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." BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

3. Mr. King admits that he has committed acts unprofessional conduct as alleged, so the Board has met the burden of persuasion and Mr. King is guilty of unprofessional conduct pursuant to A.R.S. §§ 32-2501(21)(u) [specifically 13-1801(A)(1) and 13-1801(E)], 32-2501(21)(i), 32-2501(21)(x) [specifically 32-2532(C)], 32-2501(21)(x) [specifically 32-2534(A)] . Consequently, grounds exist for the Board to impose discipline against Mr. King. See A.R.S. § 32-2551.

4. The State argues that the thefts constitute acts of moral turpitude and, because the multiple thefts took place over the period of six months Mr. King's actions were egregious. Theft does meet the definition of moral turpitude under SPS 9. See State's Exhibit 50. The thefts committed by Mr. King constitute a Class 3 Felony pursuant to A.R.S. §§ 13-1807(A)(1), 13-1801(E).

5. Under A.R.S. § 32-2551(J) discipline should be appropriate to protect the public health and safety. Considering the evidence presented by the State revocation is necessary to protect the public.

6. Mr. King also argues that the Board's failure to hold the hearing in a timely manner has resulted in a violation of his due process rights, but he presents insufficient factual and legal support for this argument. See A.A.C. R2-19-119(B)(2).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

1. Respondent is issued a Decree of Censure.

2. Respondent is placed on probation for **one year** with the following terms and conditions:

a. Continuing Medical Education

Respondent shall within **one year** of the effective date of this Order obtain **10 hours** of Board Staff pre-approved Category I Continuing Medical Education (CME) in **ethics** and **10 hours** of CME in **prescribing**. Respondent shall provide Board Staff with satisfactory proof of attendance.

b. Obey All Laws

Respondent shall obey all state, federal and local laws, all rules governing the practice of medicine in Arizona, and remain in full compliance with any court ordered criminal probation, payments and other orders.

3. Respondent is assessed the costs of formal hearing. Those costs shall be paid on or about thirty-five (35) days from the date, the Board issues an invoice for those costs, unless that deadline is extended by the Board or its Executive Director.

4. The Board retains jurisdiction and may initiate new action based upon any violation of this Order.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

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DATED this 21st day of May, 2009.

THE ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS

By _____
Lisa S. Wynn
Executive Director

ORIGINAL of the foregoing filed this 21st day of May, 2009 with:

Arizona Regulatory Board of Physician Assistants
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

COPY OF THE FOREGOING FILED this 21st day of May, 2009 with:

Cliff J. Vanell, Director
Office of Administrative Hearings
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Phoenix, AZ 85007

Executed copy of the foregoing
mailed by U.S. Mail this
21st day of May, 2009 to:

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Investigational Review