**BEFORE THE DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ARIZONA**

| | | |
|---|---|---|
| IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,<br><br>**DAVID M. PATTON**<br>**Bar No. 019563**<br><br>RESPONDENT | ) | No 07-0529<br><br>**DISCIPLINARY COMMISSION REPORT** |

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on July 12, 2008, pursuant to Rule 58, Ariz R Sup Ct , for consideration of the Hearing Officer's Report filed May 29, 2008, recommending acceptance of the Tender of Admissions and the Agreement for Discipline by Consent ("Tender") and the Joint Memorandum ("Joint Memorandum") in Support of Agreement for Discipline by Consent providing for censure, and costs

**Decision**

Having found no facts clearly erroneous, the seven members[1] of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for censure, and costs of these

[1] One lawyer member seat remains vacant Commissioner Horsley did not participate in these proceedings

disciplinary proceedings [2]

RESPECTFULLY SUBMITTED this 30th day of July, 2008

Daisy Flores

Daisy Flores, Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 30th day of July, 2008

Copy of the foregoing mailed
this 30th day of July, 2008, to

Mark S Sifferman
Hearing Officer 9J
*Norling, Kolsrud, Sifferman & Davis, P.L.C.*
16427 North Scottsdale Road, Suite 210
Scottsdale, AZ 85254

Ralph W Adams
Respondent's Counsel
*The Law Office of Ralph Adams*
520 East Portland, Suite 200
Phoenix, AZ 85004

David L Sandweiss
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by C Neto

/cs

[2] A copy of the Hearing Officer's Report is attached as Exhibit A

**BEFORE A HEARING OFFICER**
**OF THE SUPREME COURT OF ARIZONA**

| | |
|---|---|
| IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA<br><br>**DAVID M. PATTON,**<br>Bar No. 019563<br><br>Respondent | File No. 07-0529<br><br>**HEARING OFFICER'S REPORT**<br><br>(Assigned to Hearing Officer 9J Mark S. Sifferman) |

## PROCEDURAL HISTORY

The Complaint was filed in this matter on December 28, 2007. Respondent filed an Answer on January 22, 2008. Prior to an evidentiary hearing, the State Bar and the Respondent submitted a Tender of Admissions and Agreement for Discipline by Consent ("Tender of Admissions") plus a Joint Memorandum. A telephonic hearing on the Tender of Admissions was held on May 20, 2008. At that hearing, additional evidence was presented plus an affidavit from Respondent was requested. That affidavit was supplied on May 28, 2008. Based upon the Tender of Admissions and the complete record, the following facts are found to exist·

## FINDINGS OF FACT

1. Respondent was admitted to practice in Arizona on July 8, 1999, and has been licensed to practice law since that time.

2. In approximately August 2006, Respondent contracted with Judith Walker, M.D., to research and review medical records for cases involving Respondent's clients and potential clients.

3. Dr. Walker thereafter reviewed medical records for some of Respondent's client and potential clients, and billed Respondent for her services

4. Respondent failed to pay one of Dr. Walker's bills, which Respondent contended was for an amount far in excess of the agreed upon amount.

5. Dr. Walker subsequently filed a Justice Court lawsuit ("*Walker v Patton*") against Respondent for nonpayment of services rendered

6. On or about February 6, 2007, Respondent filed an Answer in *Walker v. Patton* That Answer contained 55 exhibits which revealed personal and confidential information about clients and prospective clients. Such information included medical information, diagnoses and medical histories, phone numbers, email addresses, and home addresses.

7. Some of the medical information contained in the exhibits included obstetrical and gynecological details associated with clients or prospective clients

8 Attached to Respondent's Answer in *Walker v Patton* also were emails containing information and access codes by which one might gain access to the clients' or potential clients' medical records and possibly Respondent's own medical and legal files.

9. At an evidentiary hearing in this matter, Respondent would provide evidence that the access codes were non-functional at the time of the filing of the Answer in *Walker v Patton*. The State Bar would present evidence that possibly one access code was functional for a short time.

10 Attached to Respondent's Answer in *Walker v Patton* were emails containing Dr. Walker's opinions relating to the merits of the clients' or prospective clients' cases.

11. Attached to Respondent's Answer in *Walker v. Patton* was a settlement demand letter for one matter identifying the client, the probable defendant doctor, medical information, and theory of liability.

12. After receiving the charging letter from the State Bar, Respondent filed a Motion with the Court in *Walker v Patton* seeking to seal the disclosed information For some unknown reason, the Court denied the Motion

13. There is no evidence that any of the materials contained in the exhibits to Respondent's Answer in *Walker v Patton* caused any harm to clients or potential clients.

14. Respondent's mental state was knowing

15. Respondent was admitted to practice law in the State of Arizona in 1999. A lawyer with those years of experience is expected not to supply confidential information as an exhibit to a court pleading without taking precautions such as filing the documents under seal.

16. Respondent does not have any prior disciplinary record.

17. There is no evidence of a dishonest or selfish motive.

18. There was free and full disclosure to the State Bar and a cooperative attitude during the proceedings

19. Respondent has shown true remorse. This finding is based upon the statement of State Bar Counsel describing his discussions with Respondent after the mediation in this matter. *Transcript of Proceedings*, May 20, 2008. Also, Respondent's remorse is further explained in the Affidavit supplied on May 28, 2008.

## CONCLUSIONS OF LAW

1. There is clear and convincing evidence the Respondent violated ER 1 6(a) and ER 1.15, Rule 42, Rules of the Supreme Court

2. Contingent upon the acceptance of the Tender of Admissions, the allegations that Respondent violated ERs 7.1, 8.1 and 8.4(c) are dismissed.

3. The following aggravating factor is present substantial experience in the law. The aggravating factor of "multiple offenses" does not exist as we are dealing with one act which happens to violate two rules.[1]

4. The State Bar and Respondent have agreed to the following mitigating factors, which are supported by the record: absence of prior disciplinary record, absence of selfish or dishonest motive, full and free disclosure and cooperation, and remorse.

5. The record also supports mitigating factor 9.32(d), timely good faith effort to rectify the consequences of misconduct. Once contacted by the State Bar, Respondent immediately filed a motion to seal the exhibits attached to his Answer. As the State Bar and Respondent did not stipulate to this mitigating factor and the Justice Court denied Respondent's motion, this mitigating factor is given less weight than the other mitigating factors.

6. The mitigating factors substantially outweigh the aggravating factor.

## RESTITUTION

Restitution is not at issue.

---

[1] For a discussion of a similar issue arising with criminal sentencing, see *State v Rasul*, 216 Ariz 491, 496 - 497, 167 P 3d 1286, 1291 - 1292, ¶¶ 22 - 26 (App. 2007).

## RECOMMENDATION

### CONSIDERATION OF THE ABA STANDARDS

In determining the appropriate sanction, the American Bar Association's *Standards for Imposing Lawyer Sanctions* are considered *In re Clark*, 207 Ariz. 414, 87 P.3d 827 (2004). Those *Standards* counsel that, in determining the proper sanction, four criteria should be considered: (1) the duty violated, (2) the lawyer's mental state, (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating and/or mitigating factors *In re Spear*, 160 Ariz. 545, 555, 774 P.2d 1335, 1345 (1989), ABA *Standard* 3.0.

The duty violated by Respondent was one owed to the client, more particularly, *ABA Standard* 4.2 (failure to preserve the Client's confidences). Since Respondent had no intent to benefit himself or another and his mental state was knowing, suspension is the presumptive sanction. *ABA Standard* 4 22 This Hearing Officer, however, believes that the Tender of Admissions could easily support a negligent mental state, which would call for a presumptive sanction of censure. *ABA Standard 4 23*. Considering the overwhelming mitigating circumstances, plus the lack of any actual injury, the agreed upon sanction, censure, is appropriate.

### PROPORTIONALITY ANALYSIS

The purpose of professional discipline is twofold: (1) to protect the public, the legal profession, and the justice system, and (2) to deter others from engaging in similar misconduct. *In re Neville*, 147 Ariz. 106, 116, 708 P 2d 1297, 1307 (1985); *In re Swartz*, 141 Ariz. 266, 277, 686 P.2d 1236, 1247 (1984). Disciplinary proceedings are not to punish the attorney *In re Peasley*, 208 Ariz 27, 39, 90 P 3d 764, 776 (2004); *In re Beren*, 178 Ariz. 400, 874 P.2d 320 (1994) The discipline in each situation must be tailored to the individual facts of the case in order to achieve the purposes of discipline.

*In re Wines*, 135 Ariz 203, 660 P 2d 454 (1983); *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993) To have an effective system of professional sanctions, there must be internal consistency and it is therefore appropriate to examine sanctions imposed in cases that are factually similar. *In re Shannon*, 179 Ariz. 52 (1994), *In re Pappas*, 159 Ariz 516, 768 P.2d 1161 (1988).

In the Joint Memorandum supporting the Tender of Admissions, the parties refer to *In re Hayes*, SB-04-0092-D There, the attorney negligently disclosed confidential information to creditors or potential creditors of the client with such information directly being to the disadvantage of the client. Experience in the law was the sole aggravating factor. Absence of prior discipline, absence of dishonest or selfish motive, and disclosure and cooperation were the mitigating factors. A censure was appropriate. While *Hayes* is factually distinguishable, it does illustrate that a censure is appropriate even where confidential information is used to the disadvantage of a client. Here, Respondent was not acting to the disadvantage of a client. The conduct described in *Hayes* seems more egregious than the conduct described here As the *Hayes* decision appears to be the only one in recent history with remotely similar facts to our situation, the conclusion should be reached that a censure is well within the range of appropriate sanction.

**CONCLUSION**

Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer recommends acceptance of the Tender of Admissions and Agreement for Discipline by Consent which generally provides for the following

1. Respondent shall be subject to a censure.

2. Respondent must pay all costs incurred by the State Bar and the Disciplinary Clark in connection with these proceedings.

**DATED** this 29th day of May, 2008.

Mark S. Sifferman
Hearing Officer 9J

**COPY** of the foregoing mailed this 30th day of May, 2008, to:

Ralph Adams
**The Law Office of Ralph Adams**
520 E. Portland, Suite 200
Phoenix, AZ 85004-0001
Counsel for Respondent

David L. Sandweiss
**State Bar of Arizona**
4201 North 24th Street, Suite 200
Phoenix, Arizona 85016-6288

Neeta Menelkar