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SEP 05 2008

DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ARIZONA BY: [Signature]

BEFORE THE DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED MEMBER ) No 07-1908
OF THE STATE BAR OF ARIZONA, )
)
STEVEN D. FLAGGMAN, )
Bar No. 019463 ) DISCIPLINARY COMMISSION
) REPORT
RESPONDENT )

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on August 9, 2008, pursuant to Rule 58, Ariz R Sup Ct , for consideration of the Hearing Officer's Report filed July 8, 2008, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent ("Tender") and Joint Memorandum in Support of Agreement for Discipline by Consent ("Joint Memorandum") providing for an eighteen-month suspension retroactive to January 8, 2008, two years of probation with the State Bar's Member Assistance Program (MAP), and costs

Decision

Having found no facts clearly erroneous, the seven members<sup>1</sup> of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for an eighteen-month suspension retroactive to January 8, 2008,<sup>2</sup> two years of probation (MAP), and costs within

1 One lawyer member seat remains vacant Commissioners Belleau and Katzenberg did not participate in these proceedings Mark Sifferman, Esq , a hearing officer from Phoenix participated as an ad hoc member

2 The effective date of Respondent's interim suspension in File No SB-07-0177-D

30-days of the date of the final Judgment and Order including any costs incurred by the  
Disciplinary Clerk's office<sup>3</sup> The terms of probation are as follows

**Terms of Probation**

1 Respondent has entered into a voluntary contract with MAP and shall  
2 continue with the terms of his voluntary contract upon reinstatement and shall, at the  
3 discretion of the MAP director undergo a subsequent evaluation at the time of  
4 reinstatement Any recommendations resulting from such assessment shall also be  
5 incorporated in the probation terms and conditions Probation will begin to run at the time  
6 of reinstatement and will conclude two years from the date that all parties have signed the  
7 terms and conditions of probation

8  
9  
10  
11 2 Respondent shall refrain from engaging in any conduct that would violate  
12 the Rules of Professional Conduct or other rules of the Supreme Court of Arizona

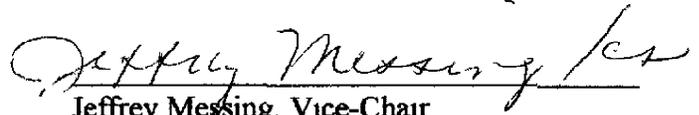
13 3 In the event that Respondent fails to comply with any of the foregoing  
14 probation terms and information thereof is received by the State Bar of Arizona, Bar  
15 Counsel shall file a Notice of Noncompliance with the imposing entity pursuant to Rule  
16 60(a)(5), Ariz R Sup Ct The imposing entity may refer the matter to a hearing officer to  
17 conduct a hearing at the earliest practicable date, but in no event later than 30 days after  
18 receipt of notice, to determine whether a term of probation has been breached and, if so, to  
19 recommend an appropriate sanction If there is an allegation that Respondent failed to  
20 comply with any of the foregoing terms, the burden of proof shall be on the State Bar of  
21 Arizona to prove noncompliance by clear and convincing evidence

22  
23  
24 4 Respondent shall pay all costs incurred by the State Bar in bringing these

25  
26 <sup>3</sup> A copy of the Hearing Officer's Report is attached as Exhibit A The State Bar's total costs and  
expenses are \$600 00

1 disciplinary proceedings within thirty (30) days of the Supreme Court's Final Judgment  
2 and Order An Itemized Statement of Costs and Expenses is attached as Exhibit A (to the  
3 Tender) and incorporated herein In addition, Respondent shall pay all costs incurred by  
4 the Disciplinary Commission, the Supreme Court, and the Disciplinary Clerk's office in  
5 this matter

6 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of September, 2008

7  
8   
9 Jeffrey Messing, Vice-Chair  
10 Disciplinary Commission

11 Original filed with the Disciplinary Clerk  
12 this 8<sup>th</sup> day of September, 2008

13 Copy of the foregoing mailed  
14 this 8<sup>th</sup> day of September, 2008, to

15 Stanley R. Lerner  
16 Hearing Officer 7V  
17 3707 North 7<sup>th</sup> Street, Suite 250  
18 Phoenix, AZ 85014-5057

19 Nancy A. Greenlee  
20 Respondent's Counsel  
21 821 East Fern Drive North  
22 Phoenix, AZ 85014-3248

23 Stephen P. Little  
24 Bar Counsel  
25 State Bar of Arizona  
26 4201 North 24th Street, Suite 200  
Phoenix, AZ 85016-6288

by 

/mps

**FILED**

JUL 08 2008

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *MVA*

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

1  
2  
3  
4 IN THE MATTER OF A MEMBER OF  
THE STATE BAR OF ARIZONA,

5 **STEVEN D. FLAGGMAN,**  
6 **Bar No. 019463**

7 Respondent.

No. 07-1908

**HEARING OFFICER'S REPORT**

(Assigned to Hearing Officer 7V,  
Stanley R. Lerner)

8  
9 The State Bar of Arizona, through undersigned bar counsel, and  
10 Respondent, Steven D. Flaggman, who is represented by Counsel Nancy A.  
11 Greenlee, submitted a Joint Memorandum in Support of the Tender of Admissions  
12 and Agreement for Discipline by Consent. The conduct that Respondent  
13 conditionally admitted is set forth in the Tender of Admissions and Agreement for  
14 Discipline by Consent. The hearing officer hereby accepts the Tender of  
15 Admissions and Agreement for Discipline by the Consent.  
16  
17

18 **A. FACTS**

19 1. At all times relevant, Respondent was a lawyer licensed to practice  
20 law in the state of Arizona having been first admitted to practice in Arizona on  
21 September 21, 1999.

22  
23 2. Respondent was suspended by an Order of Interim Suspension of the  
24 Supreme Court of Arizona in Case Number SB-07-0177-D, filed January 8, 2008,  
25 effective as of the date of the Order.



1           10. Commissioner Barth ordered Respondent to refrain from committing  
2 any criminal offense while on release status.

3  
4           11. On or about August 13, 2007, Respondent was charged before the  
5 Maricopa County Superior Court of the State of Arizona ("Maricopa County  
6 Superior Court") with one criminal count in Maricopa County Superior Court  
7 Case No. CR 2007-151666-001DT, *State of Arizona v Steven Daniel Flaggman*,  
8 arising out of Respondent's arrest on August 9, 2007  
9

10           12. In Case No. CR 2007-151666-001DT, Respondent was charged with:  
11 Count (1), Attempted Acquisition or Administration of Narcotic Drugs, a Class 4  
12 Felony.  
13

14           13. On or about August 21, 2007, while still on release status,  
15 Respondent used his computer to create a false prescription for Ritalin, a  
16 controlled substance under Arizona Law.  
17

18           14. This false prescription contained a false prescribing physician name  
19 of "Dr Cash Beechler" and a false patient name of "Michael Code."

20           15. On or about August 21, 2007, while still on release status,  
21 Respondent presented the false prescription to the CVS Pharmacy at 18440 North  
22 7<sup>th</sup> Street, in an attempt to obtain Ritalin.  
23

24           16. Police were summoned to the scene, and Respondent was questioned  
25 by Officer Walter Peeling ("Officer Peeling") of the Phoenix Police Department.

1           17    When questioned by Officer Peeling, Respondent initially denied  
2 presenting the false prescription, instead claiming that he was only at the store to  
3 purchase ice cream.  
4

5           18.   The CVS pharmacist that Respondent had presented the false  
6 prescription to identified Respondent as the person who had presented him with  
7 the false prescription.  
8

9           19.   Respondent was arrested, and subsequently admitted that he had  
10 created the false prescription on his computer.  
11

12           20.   On or about August 24, 2007, Respondent was charged before the  
13 Maricopa County Superior Court of the State of Arizona ("Maricopa County  
14 Superior Court") with one criminal count in Maricopa County Superior Court  
15 Case No. CR 2007-154789-001DT, *State of Arizona v Steven Daniel Flaggman*,  
16 arising out of Respondent's arrest on August 21, 2007.  
17

18           21.   In Case No. CR 2007-154789-001DT, Respondent was charged with:  
19 Count (1), Attempted Acquisition or Administration of Dangerous Drugs, a Class  
20 4 Felony.  
21

22           22.   On or about August 29, 2007, Respondent signed a plea agreement in  
23 Case No. CR 2007-151666-001DT in which Respondent agreed to plead guilty to  
24 one count of Criminal Possession of a Forgery Device, a Class 6 Undesignated  
25 Felony, arising out of his arrest on August 9, 2007.

1           23. Also on or about August 29, 2007, Respondent signed a plea  
2 agreement in Case No. CR 2007-154789-001DT in which Respondent agreed to  
3 plead guilty to one count of Criminal Possession of a Forgery Device, a Class 6  
4 Undesignated Felony, arising out of his arrest on August 21, 2007.  
5

6           24. Pursuant to the terms of both plea agreements, the offenses could  
7 only be designated misdemeanors upon successful completion of probation.  
8

9           25. For the conviction in CR 2007-151666-001DT, the imposition of  
10 sentence was suspended and Respondent was placed on supervised probation for a  
11 term of three years

12           26 For the conviction in CR 2007-154789-001DT, the imposition of  
13 sentence was suspended and Respondent was placed on supervised probation for a  
14 term of three years.  
15

16           27. The terms of probation in CR 2007-151666-001DT and CR 2007-  
17 154789-001DT were ordered to run concurrently.  
18

19           28. Respondent remains on supervised probation to this day.

20           29. Respondent violated one or more of the Rules of Professional  
21 Conduct as follows: Respondent committed a criminal act that reflected adversely  
22 on his honesty, trustworthiness, or fitness as a lawyer in other respects, engaged in  
23 conduct involving dishonesty, fraud, deceit or misrepresentation, and was  
24 convicted of a misdemeanor involving a serious crime or of any felony.  
25

1           30. Respondent's conduct as described in this count violated Rule 42,  
2 Ariz R.Sup.Ct , specifically, ERs 8.4(b), 8.4(c) and Rule 53 Ariz.R.Sup.Ct.

3  
4           Respondent waived his right to a formal disciplinary hearing to which he  
5 would otherwise be entitled pursuant to Rule 57(1), Ariz.R.Sup.Ct., as well as his  
6 right to testify and present witnesses on his behalf at a hearing. Respondent further  
7 waives all motions, defenses, objections or requests that he has made or raised, or  
8 could assert hereafter, if the conditional admissions and stated forms of discipline  
9 are approved. The Hearing Officer finds that Respondent was and is aware,  
10 pursuant to Rule 56(c)(4)(C), that he has a duty to comply with all rules pertaining  
11 to notification of clients, return of property and other rules pertaining to  
12 suspension, including reinstatement. The Hearing Officer finds that Respondent  
13 submitted freely and voluntarily and not under coercion or intimidation to the  
14 Tender of Admission and Agreement for Discipline. The Hearing Officer further  
15 finds that Respondent was and is aware of the Rules of the Supreme Court of  
16 Arizona with respect to discipline and reinstatement.

17  
18  
19           **B. CONDUCT**

20           As reflected in the Tender of Admissions and Agreement for Discipline by  
21 Consent, Respondent engaged in professional misconduct by: committing a  
22 criminal act that reflected adversely on his honesty, trustworthiness, or fitness as a  
23 lawyer in other respects, engaged in conduct involving dishonesty, fraud, deceit or  
24  
25

1 misrepresentation, and was convicted of a misdemeanor involving a serious crime  
2 or of any felony.

3  
4 The Hearing Officer finds that Respondent admits the facts as set forth in  
5 the Tender and admits that his conduct violated the following Rules of  
6 Professional Conduct, Rule 42 Ariz.R.Sup.Ct., specifically, ERs 8.4(b), 8.4(c), and  
7 Rule 53, Ariz.R.Sup.Ct.

8  
9 **C. SANCTION**

10 In determining the appropriate sanction, the Hearing Officer, based on the  
11 Tender and Agreement considered both the American Bar Associations' *Standards*  
12 *for Imposing Lawyer Sanctions* ("Standards") and Arizona case law.

13  
14 The State Bar of Arizona and Respondent agreed that Respondent shall  
15 receive a suspension for a term of 18 months, retroactive to January 8, 2008, the  
16 date Respondent was placed on interim suspension, and that Respondent shall be  
17 placed on probation for a period of two years under conditions set forth in the  
18 tender, and that Respondent shall pay the reasonable costs of the disciplinary  
19 proceedings. Accordingly the Hearing Officer accepts the agreement and the  
20 following sanction is imposed:  
21

22  
23 1. Respondent shall receive a suspension for a term of 18 months,  
24 retroactive to January 8, 2008, the date Respondent was placed on interim  
25 suspension, and that Respondent shall be placed on probation for a period of two

1 years under conditions set forth in the tender, and that Respondent shall pay the  
2 reasonable costs of the disciplinary proceedings. Respondent has entered into a  
3 voluntary contract with the State Bar's Member Assistance Program ("MAP").  
4 Respondent shall continue with the terms of his voluntary contract upon  
5 reinstatement and shall, at the discretion of the MAP director undergo a  
6 subsequent evaluation at the time of reinstatement. Any recommendations  
7 resulting from such assessment shall also be incorporated in the probation terms  
8 and conditions. The probation period will begin to run at the time of the  
9 reinstatement, and will conclude two years from the date that all parties have  
10 signed the terms and conditions of probation.  
11  
12

13  
14 2. Respondent's probation shall also include any additional terms  
15 deemed appropriate by the commission, or Court at the time of reinstatement.

16 3. Respondent shall refrain from engaging in any conduct that would  
17 violate the Rules of Professional Conduct or other rules of the Supreme Court of  
18 Arizona.  
19

20 4. In the event that Respondent fails to comply with any of the  
21 foregoing probation terms and information thereof is received by the State Bar of  
22 Arizona, Bar Counsel shall file a Notice of Noncompliance with the imposing  
23 entity pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The imposing entity may refer the  
24 matter to a hearing officer to conduct a hearing at the earliest practicable date, but  
25

1 in no event later than 30 days after receipt of notice, to determine whether a term  
2 of probation has been breached and, if so, to recommend an appropriate sanction.  
3  
4 If there is an allegation that Respondent failed to comply with any of the foregoing  
5 terms, the burden of proof shall be on the State Bar of Arizona to prove  
6 noncompliance by clear and convincing evidence.

7           5. Respondent shall pay all costs incurred by the State Bar in bringing  
8 these disciplinary proceedings within thirty (30) days of the Supreme Court's  
9 Final Judgment and Order. An Itemized Statement of Costs and Expenses is  
10 attached as Exhibit A and incorporated herein. In addition, Respondent shall pay  
11 all costs incurred by the Disciplinary Commission, the Supreme Court, and the  
12 Disciplinary Clerk's office in this matter.  
13  
14

15           **D. ABA STANDARDS**

16           The *Standards* provide guidance with respect to an appropriate sanction in  
17 this matter. The Supreme Court and Disciplinary Commission consider the  
18 *Standards* a suitable guideline. See *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.2d  
19 764, 770, 772 (2004); *In re Rivkind*, 164 Ariz. 154, 157, 791 P. 2d 1037, 1040  
20 (1990).  
21

22           In determining an appropriate sanction, the Supreme Court and the  
23 Disciplinary Commission consider the duty violated, the lawyer's mental state, the  
24 actual or potential injury caused by the misconduct and the existence of  
25

1 aggravating and mitigating factors. *See Peasley*, 208 Ariz. at 35, 90P.3d at 772,  
2 *Standard 3.0*.

3  
4 The parties agreed, and the Hearing Officer so finds, that the violation  
5 implicated in this case is Respondent's commission of a criminal act involving  
6 dishonesty. Respondent's conduct violated ERs 8.4(b), 8.4(c) and Rule 53 which  
7 implicate *Standard 5.11*. *Standard 5.11* provides that "Disbarment is generally  
8 appropriate when: (a) a lawyer engages in serious criminal conduct a necessary  
9 element of which includes intentional interference with the administration of  
10 justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or  
11 theft..."  
12

13  
14 The presumptive sanction in this matter appears to be disbarment.  
15 Application of the aggravating and mitigating factors also assists in determining  
16 the appropriate sanction. The parties agreed, and the Hearing Officer so finds, that  
17 the following factors should be considered in aggravation:  
18

- 19 • *Standard 9.22(a)* prior disciplinary offenses:
  - 20 1. *Respondent received an informal reprimand on 10/28/99 for*  
21 *violation of ER 5.5*
- 22 • *Standard 9.22(b)* dishonest or selfish conduct:
  - 23 1. *Respondent was forging prescriptions to obtain drugs.*
- 24 • *Standard 9.22(k)* illegal conduct, including that involving the use of  
25 controlled substances.
  - 1. *Respondent was forging prescriptions to obtain drugs.*

1 The parties agreed, and the Hearing Officer so finds, that the following  
2 factors should be considered in mitigation:

- 3 • *Standard 9.32(c) personal or emotional problems:*
  - 4 1. *Respondent was suffering from addiction to prescriptive drugs*
- 5 • *Standard 9.32 (d) timely good faith efforts to rectify consequences of*  
6 *misconduct.:*
  - 7 1. *Following his release from jail after being arrested on the*  
8 *second charge, Respondent checked in to a rehabilitation*  
9 *center and when he was released from the program, he resided*  
10 *in a ¾ sober living residence. Respondent also participates*  
11 *actively in AA.*
- 12 • *Standard 9.32(e) full and free disclosure to disciplinary board:*
  - 13 1. *Respondent admitted all of the allegations, and self reported*  
14 *his conduct to the State Bar.*
- 15 • *Standard 9 32(h) Physical disability:*
  - 16 1. *Respondent suffers from chemical dependency Medical*  
17 *evidence attached to this Joint Memorandum as Exhibit 1 (for*  
18 *which a protective order sealing this record is requested)*  
19 *supports that Respondent suffers from a chemical dependency*  
20 *to certain prescription drugs, the chemical dependency caused*  
21 *the misconduct; respondent has been sober since and continues*  
22 *to demonstrate a sustained period of successful rehabilitation,*  
23 *and that with his sobriety, the recurrence of the misconduct is*  
24 *unlikely.*

- *Standard 9.32(l) remorse:*

1. *As Respondent demonstrated at the hearing, he is sincerely remorseful for his conduct and is committed to maintaining his sobriety so that he can continue to be a functioning member of society.*

- *Standard 9.32(m) remoteness of prior offense:*

1. *Respondent prior informal reprimand was in 1999 for conduct unrelated to that at issue herein.*

### **E. PROPORTIONALITY REVIEW**

In the past, the Supreme Court has consulted similar cases in an attempt to assess the proportionality of the sanction recommended. *See In re Struthers*, 179 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized that the concept of proportionality review is “an imperfect process.” *In re Owens*, 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases “are ever alike.” *Id*

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *Peasley, supra*, 208 Ariz. at ¶ 33, 90 P.3d at 772. However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P 2d 454, 458 (1983)).

1 The cases set forth below demonstrate that long term suspension is an  
2 appropriate sanction in this matter

- 3  
4 • *In re Zavala*, SB-07-0004-D (2007). One year suspension, two years  
5 probation/MAP. Respondent pled guilty to two counts of Possession  
6 of Drug Paraphernalia, class 6 undesignated. ERs 8.4(b), Rule 53(h).  
7 Aggravation: *Standard 9.22* (c), (i), (k). Mitigation: *Standard 9.32*  
8 (a), (b), (c), (e), (g), (i), (k), (l).
- 9 • *In re Wasson*, DC No. 03-1206 (2005), Two year suspension, two  
10 years probation/MAP Respondent was convicted of two counts  
11 Aggravated DUI, class 4 felonies, stemming from two separate DUIs.  
12 ERs 8.4(b), Rule 53(h). Aggravation: *Standard 9. 22* (k). Mitigation:  
13 *Standard 9 32* (a), (b), (c), (e), (k).
- 14 • *In re Smith*, SB-95-0074-D (1996), Two year and six month  
15 suspension, two years probation. Respondent pled guilty to  
16 possession of cocaine. ERs 8.4(b), Rule 51(a).

17 Based on the above cases, the mitigating factors presented, and on the  
18 specific facts of Respondent's matter, the Hearing Officer finds, that a long-term  
19 suspension, as detailed above, is an appropriate sanction in this matter. Such  
20 sanction is in accordance with the ABA Standards, the comparable case law, and  
21 is appropriate for the facts of the case at hand.

22  
23 The Hearing Officer finds that the parties' Agreement for Discipline  
24 provides for a sanction that meets the goals of the disciplinary system The terms  
25 of the Agreement for Discipline and sanction serves to protect the public, instills

1 confidence in the public, deters other lawyers from similar conduct and maintain  
2 the integrity of the Bar.

3  
4 **F. CONCLUSION**

5 The Court and the Commission have repeatedly stated that the purpose of  
6 lawyer discipline is not to punish the offender but to protect the public, the  
7 profession and the administration of justice. *See Peasley*, 208 Ariz. at 41, 90 P.3d  
8 at 778; *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1988). The imposed sanction  
9 will accomplish those goals.

11 Dated: 7-8-08

12  
13 Stanley R. Lerner / N/M  
Stanley R. Lerner, Hearing Officer 7V

14 Original filed this 8<sup>th</sup> day  
15 of July, 2008, with  
16 the Disciplinary Clerk of the Supreme Court of Arizona

17 Copies of the foregoing mailed this 9<sup>th</sup> day  
18 of July, 2008, to:

19 Stephen P. Little, Bar No. 023336  
20 Staff Bar Counsel  
21 State Bar of Arizona  
22 4201 N. 24<sup>th</sup> Street, Suite 200  
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Respondent's Counsel

By: Nesta Mavelkar