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JUL 08 2008

HEARING OFFICER OF THE
SUT. RE. COU. OF ARIZONA
BY MVA

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

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IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

STEVEN D. FLAGGMAN,
Bar No. 019463

Respondent.

No. 07-1908

HEARING OFFICER'S REPORT

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

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

A. FACTS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on September 21, 1999.
2. Respondent was suspended by an Order of Interim Suspension of the Supreme Court of Arizona in Case Number SB-07-0177-D, filed January 8, 2008, 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.

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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 7th 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.

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20 **B. CONDUCT**

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

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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.*
25

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

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

21 The Hearing Officer finds that the parties' Agreement for Discipline
22 provides for a sanction that meets the goals of the disciplinary system. The terms
23 of the Agreement for Discipline and sanction serves to protect the public, instills
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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.
10

11 Dated: 7-8-08

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

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

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

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