

IN THE  
**SUPREME COURT OF THE STATE OF ARIZONA**  
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE  
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**CHARLENE TARVER,**  
**Bar No. 025926**

Respondent.

**PDJ 2015-9004**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 13-3119 and 14-0708]

**FILED JANUARY 29, 2015**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent (Agreement) filed on January 13, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed Agreement. Accordingly:

**IT IS HEREBY ORDERED** Respondent, **Charlene Tarver**, is hereby Reprimanded and shall be placed on Probation for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this Order.

**IT IS FURTHER ORDERED** Ms. Tarver shall be placed on Probation for a term of eighteen (18) months. The period of Probation shall commence upon entry of this Order and will conclude eighteen (18) months from that date.

**IT IS FURTHER ORDERED** as a term of Probation, Ms. Tarver shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP),

at 602-340-7258, within thirty (30) days of the date of this Order. Ms. Tarver shall submit to a LOMAP examination of her office's procedures, including, but not limited to, client relations. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The Probation period will begin to run on the date of this Order and will conclude eighteen (18) months from that date. Ms. Tarver shall be responsible for any costs associated with LOMAP.

**IT IS FURTHER ORDERED** that as a term of Probation, Ms. Tarver shall obtain a practice monitor, approved by LOMAP, who will advise Ms. Tarver concerning litigation questions and supervise her regarding law practice management and ethics.

**IT IS FURTHER ORDERED** that as part of her Probation, Ms. Tarver will be required to make Restitution in the amount of \$5,660.00, plus prejudgment interest at the rate of ten per cent per annum from June 1, 2013 to the Complainant, Nancy Topoozian, in Count I and Restitution in the amount of \$2,500.00, plus prejudgment interest at the rate of ten per cent per annum from May 30, 2012 to Complainant's client, Charles Poore, in Count II. Due to financial hardship, Ms. Tarver will make monthly payments in Count I in the amount of \$314.45 on the fifth of every month, beginning the first month following the date of this Order, until the restitution is paid in full. Ms. Tarver will make monthly payments of \$138.89 in Count II on the fifth of every month, beginning the first month following the date of this Final Judgment and Order, until the Restitution is paid in full.

**IT IS FURTHER ORDERED** that Ms. Tarver shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00, within thirty (30) days from

the date of service of this Order. Any unpaid amount shall bear interest at the statutory rate of ten per cent per annum until paid in full. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

**DATED** this 29<sup>th</sup> day of January, 2015.

*William J. O'Neil*

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**William J. O'Neil, Presiding Disciplinary Judge**

Copies of the foregoing mailed/emailed  
this 29<sup>th</sup> day of January, 2015.

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by: JAlbright

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

**CHARLENE TARVER,**  
**Bar No. 025926**

Respondent.

**No. PDJ-2015-9004**

**REPORT ACCEPTING CONSENT  
FOR DISCIPLINE**

[State Bar File Nos. 13-3119 and  
14-0708]

**FILED JANUARY 29, 2015**

An Agreement for Discipline by Consent (Agreement) was filed on January 13, 2015, and submitted under Rule 57(a)(3), of the Rules of the Arizona Supreme Court. The Agreement was reached before the authorization to file a formal complaint. Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate".

Rule 57 requires admissions be tendered solely "...in exchange for the stated form of discipline..." Under that rule, the right to an adjudicatory hearing is waived only if the "...conditional admission and proposed form of discipline is approved..." If the agreement is not accepted those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding.

Under Rule 53(b)(3), notice of this Agreement was provided to the complainants by phone. Complainants were notified of the opportunity to file a written objection to the agreement with the State Bar within five days of bar counsel's

notice. While complainants do not object to the stipulated sanction, they each object to the repayment over 18 months and request they be paid immediately.

The Agreement details a factual basis for the admissions to the two charges in the agreement. Ms. Tarver conditionally admits violations of ERs 1.3, 1.4, 1.5, 3.1, 8.4(d), and 54(d)(2). The parties stipulate to a sanction of reprimand with eighteen months of probation with the State Bar's law Office Management Assistance Program (LOMAP), including a practice monitor, restitution and the payment of costs and expenses of the disciplinary proceeding in the amount of \$1,200.00. Aggravating and mitigating factors were generally referred to in the Agreement. The undergirding proof of mitigation of "personal problems" was later submitted under seal.

As conditionally admitted in the Agreement, Ms. Tarver advised the first Complainant the two year statute of limitations regarding the filing of a federal suit against her doctor as a result of medical complications following surgery that had been performed nearly five years and eleven months earlier might be avoided by alleging breach of contract and breach of implied warranty. A retainer Agreement was signed and Ms. Tarver was paid a retainer and anticipated costs of \$5,660.

With two weeks of the July 2 deadline to file the lawsuit, Complainant wrote Ms. Tarver for a status update. Having heard and received nothing, her client emailed her concerning the July 2<sup>nd</sup> deadline to file suit, requesting copies of the proposed complaint. Ms. Tarver did not respond to the first email. When a second email was sent four days later on June 24, Ms. Tarver responded later in the day acknowledging the deadline and agreed to forward copies of the complaint prior to filing.

Not having received anything, her client emailed her again on June 26. Ms. Tarver did not respond. On July 1, her client notified her again demanding an

explanation for the lack of communication and the failure to file suit early as promised. On the filing deadline of July 2, Ms. Tarver emailed her client a draft complaint which misspelled her client's name and was to be filed in state court rather than federal court. When her client raised these concerns, Ms. Tarver explained she had concern over possible subject matter jurisdiction issues in Federal court and could move it to federal court later.

As conditionally admitted in the Agreement, the following day, July 3, Ms. Tarver filed a two count complaint alleging breach of contracted and implied warranty. Her client asked on July 10 if the defendant had been served. Ms. Tarver did not respond. Her client emailed again on July 14 but received no response. Her client wrote on July 18 asking for a listing the dates and hours Ms. Tarver had worked on the case. On July 25, Ms. Tarver responded, without listing her dates or hours of work nor answering whether service had been effectuated on the defendant. Multiple emails were sent and not responded to over a multi-week period.

On September 5, 2013, the defendant filed a motion for Judgment on the Pleadings pointing out the statute of limitations for breach of contract for rendering health care was two years and had expired nearly four years prior to the filing of suit. Ms. Tarver did not inform her client of the motion nor respond to it. After several more emails were sent regarding scheduling, Ms. Tarver and her client spoke on September 13. The next day her client asked why Ms. Tarver had filed a certificate for Arbitration. Nearly a month passed before Ms. Tarver responded despite an additional email being sent to her for an update. On October 17, 2013, the court dismissed the case with prejudice noting the failure to file a response.

As conditionally admitted in the Agreement, on October 25, her client again asked for an update with no response. On November 1, the client discovered her case had been dismissed by reviewing the Superior Court website and informed Ms. Tarver of her discovery demanding her file. On December 2, Ms. Tarver filed a Motion to Vacate Judgment, which was denied on December 17, citing the two year statute of limitations established by the Arizona Medical Malpractice Act, which includes contract actions. Ms. Tarver asserted her belief the matter had merit, apparently despite the language of the statute. Her client demanded a refund. Ms. Tarver informed her client of her appeal rights. She was repeatedly non-responsive to the State Bar inquires citing email, voicemail and mailing difficulties. Ms. Tarver ultimately timely responded to the screening letter of bar counsel.

The second Complainant is an attorney who took over a guardianship previously handled by Ms. Tarver. As conditionally admitted in the Agreement, the husband and wife clients were in their 80's at the start of representation. Complainant had concern upon learning Ms. Tarver had been paid \$5,000 for what appeared to be very little work. His several attempts to contact Ms. Tarver to discuss the case, obtain the file and obtain a refund were to no avail. Ms. Tarver has asserted that due to her office relocation and technical difficulties with phone lines, internet access/email and US Post mail, she did not receive the correspondence.

As conditionally admitted in the Agreement, Ms. Tarver charged her clients a paid upon receipt \$5,000 flat fee calling for her to prepare and file a Petition for Informal Appoint of Guardian and Conservatorship on behalf of wife. Ms. Tarver states she prepared the document, but did not file it as Ms. Tarver determined wife was lucid and did not want husband to serve as her guardian. A part of the basis for

husband wanting a guardianship was based on two family members obtaining a power of attorney from wife.

As conditionally admitted in the Agreement, Ms. Tarver wrote these two family members, not identifying who she represented and identifying the individual they were to contact as "my associate" despite that individual not being admitted to practice law. Complainant was the wife's lawyer for several years and had drafted the Power of Attorney. Ms. Tarver asserts she did not receive any communications, including the request for her file by husband's attorney, which has still not been received from her.

The parties agree that *Standard* 4.43 of the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* is most applicable under the circumstances of this matter. The mitigation is substantial. The conditionally submitted facts could easily justify a greater sanction especially in light of Ms. Tarver's own emails acknowledging an awareness potentially beyond negligence. Notwithstanding, and given the unique circumstances in this matter, the PDJ finds the proposed sanctions of reprimand and probation meet the objectives of discipline. The Agreement is accepted.

**IT IS ORDERED** incorporating by this reference the Agreement and any supporting documents by this reference. The agreed upon sanctions are: reprimand with eighteen months of probation (LOMAP), including a practice monitor, restitution in the amount of \$5,600.00 to the first client, \$2,500.00 to the second client, and the payment of costs and expenses of the disciplinary proceeding in the amount of \$1,200.00. These financial obligations shall bear interest at the statutory rate of ten per cent per annum from June 1, 2013 for the first client, from May 30, 2012 for the

second client, and from March 1, 2015 for the costs and expenses of the disciplinary proceeding.

**IT IS FURTHER ORDERED** the Agreement is accepted. Costs as submitted are approved for \$1,200.00. Now therefore, a final judgment and order is signed this date. Ms. Tarver is reprimanded and probation imposed.

**DATED** this 29<sup>th</sup> day of January, 2015.

*William J. O'Neil*

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**William J. O'Neil, Presiding Disciplinary Judge**

Copies of the foregoing mailed/mailed  
this 29th day of January, 2015.

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**BEFORE THE PRESIDING DISCIPLINARY JUDGE  
OF THE SUPREME COURT OF ARIZONA**

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

**CHARLENE TARVER,  
Bar No. 025926,**

Respondent.

PDJ 2014 - \_\_\_\_\_

**AGREEMENT FOR DISCIPLINE BY  
CONSENT**

State Bar Nos. 13-3119 and 14-0708

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Charlene Tarver, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A Probable Cause Order was entered on September 23, 2014, but no formal complaint has been filed in this matter. Respondent voluntarily waives the right to an adjudicatory hearing unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainants by phone. Complainants were notified of the opportunity to file an objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. Complainant Topoozian has not objected to the sanction of Reprimand, but objects to Respondent's proposal to repay her over the course of 18 months, as she wishes to be repaid immediately. Complainant Leonard has no objection to the sanction of Reprimand, but objects to Respondent's proposal to repay her client over the course of 18 months, as the client prefers to be paid immediately.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, ERs 1.3, 1.4, ER 1.5, 3.1, 8.4(d) and Rule 54(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand with Probation, including restitution. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within thirty (30) days from the date of this order, and if costs are not paid within the thirty (30) days, interest will begin to accrue at the legal rate.<sup>1</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

## **FACTS**

### **GENERAL ALLEGATIONS**

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 April, 24, 2008.

### **COUNT ONE (File no. 13-3119/ Topoozian)**

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<sup>1</sup> Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

1. Complainant Nancy Topoozian (Topoozian) hired Respondent to file suit against her doctor as a result of medical complications following surgery. On approximately June 1, 2013, Topoozian signed a retainer agreement and wrote Respondent a check for \$5,660 to cover Respondent's "retainer" and anticipated filing/service costs. The fee agreement indicated that, in addition to the retainer, Respondent would receive 30% of any settlement or 40% of a judgment obtained at trial.

2. On June 20, 2013 Topoozian emailed Respondent: "I am doing a follow up since I have not heard from you or seen any documents that you filed. As we both know there is a July 2nd deadline to file a lawsuit. Please send me the documents before you file themith (sic) the courts."

3. When no response was received, on June 24, 2013 Topoozian emailed Respondent, "I am following up with you. I have not heard from you since June 8th..."

4. Later in the day, Respondent emailed: "[f]orgive me for the delay in following up with you. I'll make sure I forward the documents to you before they are filed. And yes I'm aware that we're aiming for 7/2 as a deadline- given the statute of limitations on this."

5. On June 26, 2013, Topoozian emailed Respondent again asking for an update.

6. On July 1, 2013, when Topoozian had not received a response, she emailed Respondent:

I have sent many emails and have left phone messages trying to find out where we are in my case. Today is July 1, 2013, tomorrow is the last day to file my case according to the statues (sic) of limitations. When I hired you and handed you the retainer check, I do so under the clear impression that you would be keeping me in the loop and having a solid communication between the two of us. To this day, I know nothing about my case. You also reassured me you like to file early, which obviously is not the case here.

I am asking again, for a summary of my case. I would also like to know why there has been a lack of communication from your law firm to me, that I was promised before I hired you.

7. On July 2, 2013, Topoozian received an email from Respondent attaching a draft Complaint and asking Topoozian to review it and provide comment. In responding, Topoozian raised various concerns, including the misspelling of her name, and noted her surprise that Respondent was planning to file in state court after she had indicated to Topoozian that the matter would be filed in federal court.

8. Respondent responded, in part, "[m]y intent was to file this in Federal Court, but given the fact that you're (sic) six year statute of lims ends today/tomorrow, I didn't want to take chances and have the court dismiss your case on a technicality—like lack of subject matter jurisdiction in the federal court. We can always move it to fed court if we can find a definite basis to do so."

9. Topoozian replied, "[t]hank you for the great explanations (sic). Have a great day!"

10. On July 3, 2013, Respondent filed a two count complaint alleging breach of contract and breach of implied warranty [6 years from the date of Topoozian's alleged injury].

11. On July 10, 2013, Topoozian emailed, "[h]as Dr Hiatt (defendant) already been served? How much time does he have after he is served?"

12. When Respondent failed to respond, Topoozian re-sent the email on July 14.

13. When Respondent again failed to respond, on July 16, 2013, Topoozian emailed: "Charlene... you promised me great communication between you and I before I handed over the retainer fee, but I do not see that happening. Please answer the simple questions I have sent you twice now and now sending (sic) for a third time."

14. On July 18, 2013, Topoozian again emailed, "[t]his is the 4th email I am sending you asking two simple questions. Please see the original and respond. Can you please also send the work hours you have worked so far on my case including dates and time."

15. On July 25, 2013, Respondent responded:

I was out of town with a family matter, and unable to respond to your last emails. Dr. Hiatt's agent should be served this week. From there he has 20 days to respond. If he fails to do so a motion for default judgment will be entered.

Regarding hours and days of service on your file, thus far I have focused on file review, research, and preparation of the summons and complaint. I estimate more than 25 hours have been spent so far, but I will need to go back and detail those hours. With that said, because you are not

making monthly payments or being billed as such, your account will not generate an invoice. If you'd like to be transferred to a "pay as you go account," rather than some version of contingency, I'm happy to make the switch and bill you monthly.

16. Respondent did not get back to Topoozian with details concerning the hours that she had worked on her case.

17. On July 30, 2013, Topoozian wrote, "I'm still curious on why Dr Hiatt has not been served yet."

18. On July 31, 2013, Respondent responded, "[t]he summons and complaint was sent to the process server. I'll follow up with them to see where we are."

19. On August 9, 2013, Topoozian emailed, "Charlene has Dr Hiatt been served yet? I just looked on line and did not see it recorded with the Superior court. Can you please give me the name of the process server?"

20. On August 14, 2013, Topoozian emailed, "[h]i Charlene, Still hoping to receive these answers... ."

21. On August 15, 2013, with no response, Topoozian again emailed Respondent regarding her communication concerns. When no response was received, on August 25, 2013, Topoozian emailed Respondent:

Charlene, I just looked on the Superior court website again and as of today, Aug 25, 2013, Dr Hiatt has not been served. I also noticed you had my case sent to Arbitration. Why did you have it sent to arbitration? This is not what we had discussed. In arbitration the ruling is for \$50,000 or less. Why would I hire a lawyer and pay a retainer of \$5000 plus court fees and 30% for a case that is a

maximum of \$50,000? We had discussed at least \$150,000 to \$200,000. I thought you represented me, but you are not handling my case the way we discussed it nor the way I wanted it handled. You are also not responding to my emails in a timely fashion. Please respond to this email so I know what is going on.

22. Respondent responded that day requesting a telephonic meeting to discuss the case and Topoozian's communication concerns.

23. On September 5, 2013, Dr. Hiatt's counsel filed a Motion for Judgment on the Pleadings asserting that claims against health care providers

... including those for breach of contract in rendering health care, must be brought pursuant to A.R.S. §12-561 and 12-562. Claims brought under A.R.S. §12-561 are subject to a two-year statute of limitations per A.R.S. §12-542. Because the medical care at issue occurred in July of 2007, even if Plaintiff properly pled her Complaint in medical negligence, the statute of limitations bars her claims.

24. Respondent failed to file a response to the motion and failed to notify Topoozian of the motion. Respondent's position is that she:

.... missed the September 26<sup>th</sup> deadline, by thirty-three (33) days—due to personal and family medical issues, relocation of her office, and technical problems with the internet and AZ Turbo Court filing system...

25. After several emails discussing scheduling, Topoozian and Respondent spoke on September 13, 2013.

26. On September 14, 2013, Topoozian emailed Respondent:

Looking at the Superior court website, I noticed you filled out a certificate of Arbitration, but during our phone conversations you say you had no idea why it is in Arbitration. I am very confused as you and I only talked about Federal court and now my case is in Superior court in

Arbitration. Please explain. Can you please send me all the papers you have filed and the papers Dr Hiatt has sent you/the court.

27. When Respondent did not respond, on October 5, 2013, Topoozian emailed again indicating that she was still waiting for an answer.

28. On October 9, 2013, Respondent responded indicating that she had been in the process of moving offices causing phone and internet issues. She asked Topoozian to send details of her damages and stated,

[i]f it is feasible, we can file an amendment regarding arbitration or a motion to move the matter to federal court, but we must be able to justify a basis for the move. Please send me your itemized list of 'actual' damages along with any documentation supporting your damages. I'll send you the docs I have in pdf format.

29. On October 17, 2013, the court dismissed Topoozian's case with prejudice, noting Respondent's failure to file a response. Respondent never informed Topoozian that the case had been dismissed. She has indicated that this is because she did not receive the order of dismissal.

30. On October 25, 2013, Topoozian emailed: "Charlene I'm still waiting for you to send my documents. I have not received them yet. In our initial consultation we discussed in great details the damages, please use that information. At the time you thought the damages warrant for this case to go to Federal Court. Are there any updates in my case?"

31. On November 1, 2013, Topoozian checked the court's website and saw that the case had been dismissed.

32. On the evening of November 18, 2013, Topoozian wrote:

I will be at your office on Wednesday November 20, 2013 to pick up all of my court documents from you. I will be also (sic) pick up your recorded hours that you worked on my case and all the notes you have taken that pertain to my case. Please email me your new phone number and address.

29. Respondent responded the following morning:

You will recall that you picked up your binder prior to your cross country trip. The only docs I had were those that you electronically transferred to me as exhibits. Later today I will electronically transfer you the court docs that were filed by my office. Of course my notes are intellectual property, and I won't be able to send you those.

I'm happy to sit with you and discuss your case, but I am unavailable on Wednesday to do so. Please provide several alternate dates that will work for you.

30. Respondent forwarded several court documents that afternoon.

31. On the following day, Respondent emailed Topoozian in part, "[p]lease also be advised that a lien will be filed following my discussion with the State Bar."

32. On December 2, 2013, Respondent filed a Motion to Vacate Judgment, "... on the grounds that counsel failed to timely file an objection, due to family medical issues, relocation of her office, and technical difficulties with the AZ Turbo Court filing system." In the motion she indicated that she had attempted to file a Motion for Extension of Time on October 29, 2013, but that she had difficulty with AZ TurboCourt. Respondent explained that the Motion for Extension of Time that she attempted to file would have been filed 12 days after the case had been dismissed with prejudice, because she had not received a copy of the court's order dismissing the case.

33. On December 17, 2013, the court issued a minute entry denying the Motion to Vacate and stating:

The Court does not find that excusable neglect has been established by sufficient facts by Plaintiff's counsel. The conclusory allegations without more factual detail do not demonstrate excusable neglect. There is also no likelihood of success on the merits demonstrated by the pleadings. The case as described by Plaintiff's counsel is a tort claim and calling it a contract claim does not make it so. Whether a physician or other health care provider properly performs an agreed upon procedure according to its terms is a claim for medical malpractice subject to a valid defense of statute of limitations as set forth by the defense.

Respondent asserts that she filed Topoozian's case as a breach of medical contract, because she believed the matter had merit, and that there was a reasonable basis to challenge the current Arizona law. See letter from Respondent attached hereto as Exhibit "C".

34. On December 31, 2013, Topoozian asked for the return of the \$5,600 that she paid to Respondent for the representation and for Respondent's legal malpractice information. Respondent did not respond. Respondent's position is that she never received the email.

35. On the same day, Respondent wrote an email to Complaint stating:

December 2, 2013 our office filed a Motion to Vacate Judgment in your breach of contract matter against Dr. Hiatt. The Superior Court's Minute Entry is attached hereto for your records and reference.

Although the Court denied the motion, you have the option of appealing the court's dismissal of your case should you decide to do so, but you must appeal before the time limitation runs on the appellate process. Local counsel and

the Federal and/or Arizona rules of civil procedure can provide you more detailed information regarding the appellate process.

This correspondence will be forwarded to the State Bar for inclusion in your complaint.

36. On January 3, 2014, intake bar counsel left a voicemail for Respondent requesting information related to the personal, family health, and office relocation issues that Respondent complained of in her motion to the court in September of 2013.

37. Respondent returned the phone call on January 8, 2014, and indicated that she would provide the information on Monday, January 13, 2014.

38. On January 22, 2014, when the information had not been provided; intake staff called and again left a voicemail requesting the information. Respondent did not respond. Thereafter, the matter was forwarded to litigation counsel. Respondent later submitted detailed documents to counsel outlining the sensitive issues resulting in Respondent's failure to respond. Issues addressed in Respondent's Request for Protective Order filed June 4, 2014.

39. On February 25, 2014, Respondent submitted a timely response to bar counsel's screening letter.

40. During bar counsel's interview of Respondent, Respondent indicated that she experienced significant email and phone issues before and after her move into a new office space in October of 2013. She has provided three "ticket numbers" to bar counsel memorializing her communications with Cox Communications to attempt to

remedy the issues. According to Respondent the ticket numbers relate to calls made on October 11, October 14, and November 4, 2013.

41. Bar counsel attempted to email Respondent on June 20, 2014 and June 23, 2014, to obtain additional information and the emails were returned undeliverable with an error message. Bar counsel also left voicemails for Respondent on June 20, 2014 and June 24, 2014, but Respondent failed to timely respond.

42. Respondent asserts that she did not receive Bar counsel's emails on the 20<sup>th</sup> or 23<sup>rd</sup> due to technical issues with the firm's email host during the period of 6/20-6/26; and that her phone lines were handled offsite by a "live" receptionist service, which emailed her voicemail messages via waive file. Respondent asserts that because her emails were down, she did not receive any waive files from the service including Bar counsel's calls. Had she received the emails or calls she would have promptly replied.

**Rule Violations:**

Rule 42, Ariz. R. Sup. Ct.:

1. ER 1.1 requires a lawyer to provide competent representation to a client. Respondent filed a tort claim under breach of contract and breach of implied warranty theories. The matter was dismissed after the court found that there was no likelihood of success on the merits. Respondent had no experience in medical malpractice actions at the time that she took Complainant Topoozian's case.
2. ER 1.2 requires a lawyer to abide by a client's decisions concerning the objectives of representation and to consult with a client concerning the means by

which they are pursued. Respondent certified her client's case for arbitration without consulting with her client.

3. ER 1.3 requires a lawyer to act with reasonable diligence. Respondent failed to timely respond to multiple communication attempts by her client, including requests for documents and failed to timely respond to a motion.

4. ER 1.4 requires a lawyer to reasonably communicate with her client. Respondent failed to timely communicate with her client on a number of occasions and failed to keep her client reasonably informed of the status of her case.

5. ER 1.5 requires a lawyer's fee to be reasonable. Respondent charged her client \$5,000 for work of little or no value.

6. ER 1.16 requires a lawyer upon termination of representation to take steps to the extent reasonably practicable to protect a client's interests such as surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned. Respondent did not respond to Topoozian's request for a refund.

7. ER 3.1 prohibits a lawyer from bringing or defending a proceeding, or asserting or controverting an issue therein, unless there is a good faith basis in law and fact for doing so which is not frivolous. Respondent brought a tort claim under breach of contract and breach of implied warranty theories in an attempt to circumvent the expired statute of limitations on a medical malpractice claim.

8. Rule 54(d)(2) requires a lawyer to furnish information or respond promptly to any inquiry or request from bar counsel. Respondent failed to comply with intake counsel's requests for information and failed to respond to litigation counsel's voicemails.

**COUNT TWO (File no. 14-0708/Leonard)**

1. Complainant Tracey Leonard (Leonard) is an attorney who took over a guardianship matter previously handled by Respondent. The client, Charles Poore, and his wife, were both in their 80's at the start of the representation. Poore had concerns that two women, both distant family members by marriage, were trying to gain control of Poore's wife's retirement pension fund and social security account. The women had taken Poore's wife to a bank at which Poore's wife signed a power of attorney giving one of the women control of her pension and social security checks.

2. Leonard first met with Poore on October 9, 2013, and learned that Poore had previously paid Respondent \$5,000.00 for what appeared to Poore and Leonard to be very little work.

3. In the bar charge, Leonard wrote, "I have made several attempts to contact Ms. Tarver to discuss the case, to obtain the file and to obtain a refund for Mr. Poore, to no avail." Respondent asserts that due to her office relocation and technical difficulties with phone lines, internet access/emails, and US Postal mail, she did not receive Leonard's correspondence, beyond the initial contact. From there, she instructed her then office admin to forward the file contents to Leonard. She

acknowledges that she did not certify the correspondence, and that she heard nothing further from Leonard until the formal complaint was filed against her.

4. Poore had first met with Respondent on May 30, 2012, at his home. Respondent charged him \$250 for the initial consultation.

5. On June 8, 2012, he traveled to Respondent's office and paid a flat fee of \$5,000. Respondent has indicated that she treated the fee as an earned upon receipt fee. The signed retainer agreement does not include required ER 1.5 language notifying the client of his right to a refund of unearned fees. The agreement called for Respondent to prepare and file a Petition for Informal Appointment of Guardian and Conservatorship on behalf of Poore's spouse.

6. Respondent indicated that she did prepare the documents, but they were not filed because after performing her due diligence she preliminarily determined that Poore's wife was lucid and did not want him to serve as her guardian or conservator. Respondent asserts that she did not contact the Attorney General's Office to determine whether Poore was coercing his wife – but rather to have them commence an investigation of the "two Brendas". See Respondent's Exhibit "C".

According to Poore, Respondent did not communicate with him concerning her decision to contact Adult Protective Services.

7. Poore wrote to Respondent on June 23, 2012, stating, "... I would appreciate a progress report so I have an idea of what is happening and where we are in the scheme of things."

8. On August 25, 2012, Respondent wrote letters to the two family members who had taken Poore's wife to Chase bank to obtain the Power of Attorney. The letters informed them that Tarver Law Group "has been retained regarding the General Durable Power of Attorney signed by Mrs. Eleanor R. Poore on or about February 1, 2012." The letter did not identify Mr. Poore or Mrs. Poore as her client. The letter provided:

You may be aware that Eleanor Poore was diagnosed with dementia some time prior to the signing of this Power. Hence, pursuant to Arizona law, she lacked the capacity to execute such a document. Furthermore, she vehemently denies having provided specific authority to establish a financial power of attorney. And instead, she was under the impression that she was establishing a healthcare power of attorney. Given her advanced dementia, and lack of capacity, the February 1<sup>st</sup> General Durable Power of Attorney is hereby null and void. As such, we request that you cease and desist any and all activity in reliance thereto.

Should you have questions, require additional information, or desire to discuss the matter in further detail, please feel free to reach me or **my associate Delano Phillips** at .... ."

9. Delano Phillips, identified by Respondent as, "my associate", was not admitted to practice law until January, 2014, more than one year after the letter was written. Respondent asserts that her reference to Mr. Phillips as her "associate" was solely intended to identify him as her colleague or someone having a relationship with the firm, and not for purposes of holding him out as a junior lawyer in the firm.

10. After sending the letter, Respondent received a letter from Attorney John C. Lincoln indicating that he was Poore's wife's lawyer, as he had drafted her Power of Attorney. He stated, "[y]our letter does not say whom you represent. Lincoln further stated, "[p]lease do not make blanket statements that someone with dementia has

no legal ability to execute a valid Power of Attorney. That is not an accurate statement of the law.”

11. Poore’s wife first used Lincoln as her attorney several years ago.

12. Respondent has provided a letter that she received on September 27, 2012, from Adult Protective Services stating the following:

Adult Protective Services (APS) completed its investigation of Eleanor Poore, received on 5/11/2012. The Adult Protective Services investigation did not substantiate the allegations of exploitation. This case was closed on 9/21/2012.

13. Respondent does not have a copy of her submission to Adult Protective Services. She believes her complaints were filed either electronically or over the phone, and any application or written correspondence would have been included in the file forwarded to Leonard. Respondent also doesn’t recall whether she forwarded Poore a copy of the letter she received closing the Adult Protective Services investigation, but asserts that he was aware that she had filed the complaint and the findings therefrom.

14. Poore wrote to Respondent on February 18, 2013, stating, “[i]t has been an almost an (sic) absurd amount of time since we have made contact in any fashion and I find this a bit strange considering the nature of the case and Attorney/Client relationship.” Poore went on to request that Respondent contact him, but she failed to do so.

15. On September 20, 2013, Poore wrote a letter to the Attorney General's Office stating:

On 6/8/2012 I retained an attorney for five thousand dollars for the purpose of protecting my wives interest from two women trying to gain control of her retirement pension fund and her social security account. I have had no luck in contacting the Attorney and have had no progress report of any sort for over a year. I have had only two maybe three brief phone calls at the most. All my calls go unanswered.

16. Poore went on to state, "[h]ere is hoping I will get some advice as to what avenues to pursue in the interest of my wife and I. My wife and are both 'Eighty Two' and she is weakening and showing advance senility by the day." See Respondent's letter Exhibit "C".

17. Respondent failed to provide Poore with her new office address, although her email and telephone information remained the same, when she moved offices at the start of October. Shortly thereafter, Poore sought out Leonard as his new attorney after receiving a recommendation from a friend.

18. On October 9, 2013, the date of Poore's initial meeting with Complainant, Complainant wrote a letter to Respondent requesting Poore's case file and a refund. She also included a copy of her letter of representation. The mail was returned undeliverable.

19. On October 14, 2013, Leonard's assistant emailed Respondent and Respondent responded with a new mailing address and stated that she would send the file via U.S. Mail. Respondent has indicated that, to the best of her recollection, this is the only communication that she received from Leonard's office. Respondent has further indicated that, to the best of her knowledge, a copy of the file was forwarded by her

office manager to Leonard in mid-October. Respondent does not have any paperwork documenting the alleged mailing.

20. When the file was not received, Leonard sent a follow-up email on November 7, 2013, but did not receive a response.

21. On November 18, 2013, Leonard sent a letter certified mail to the address previously provided by Respondent in her email of October 14, and it was returned undelivered. Respondent did, however, provide proof of her lease agreement, and office occupancy at the subject address, during the timeframe Leonard's mail was returned. Respondent also asserts that due to the office-relocation she experienced a number of technical challenges with her phone lines, internet and receipt of US postal mail.

22. On December 11, 2013, Leonard left a message at Respondent's law office, but received no response. Respondent asserts that she did not receive any correspondence or communications from Leonard beyond the initial contact. And that if she had, she would have responded.

23. To date, Leonard has not received Poore's file and Poore has not received a refund.

24. Respondent has indicated to bar counsel that she believes that her office earned the \$5,000 that she charged Poore. She has provided an accounting indicating that she performed at least 22 hours of work in the case, including "3+" hours of client communications from "6/18/12-10/15/13," two visits to Poore's home, an in-office meeting with Poore, preliminary preparation of Poore's petitions for guardian and conservator, several communications with the Attorney General's Office and others

regarding "the two Brendas" and Mrs. Poore, communications with Mrs. Poore's bank, and her former counsel.

25. According to Poore, he had virtually no contact with Respondent (2-3 short telephone calls) because he could not reach her. He indicated that towards the end of the representation, he had a brief conversation with Respondent by phone during which she told him that she would set up a meeting. Respondent, however, failed to follow up and Poore felt compelled to find a new lawyer.

**Summary of Rule Violations:**

Rule 42, Ariz. R. Sup. Ct.:

1. ER 1.2 requires a lawyer to abide by a client's decisions concerning the objectives of representation. Respondent did not prepare or file the petition for informal appointment of guardian and conservatorship that her client paid her to complete.
2. ER 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client. Respondent failed to respond to her client's phone calls and the phone calls of Complainant Leonard on her client's behalf.
3. ER 1.4 requires a lawyer to reasonably communicate with her client. Respondent failed to communicate with her client for great lengths of time, failed to respond to phone calls, and failed to keep him informed of the status of work that she was hired to perform.
4. ER 1.5(a) prohibits a lawyer from charging or collecting an unreasonable fee. Respondent appears to have charged and collected a fee for work of little to no value to her client.

5. ER 1.5(d)(3) requires prohibits a lawyer from charging an "earned upon receipt fee, unless the client is simultaneously advised in writing that the client may nevertheless discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee based upon the value of the representation. Respondent's fee agreement failed to contain such language.

6. ER 1.7 prohibits a lawyer from engaging in a concurrent conflict of interest. Respondent suspected that Poore's wife did not want Poore to be her guardian and then contacted adult protective services to determine whether Mrs. Poore was being coerced by "the two Brendas".

7. ER 1.16 requires a lawyer upon termination of representation to take steps to the extent reasonably practicable to protect a client's interests such as surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned. Respondent failed to timely respond to communication attempts by her client's new counsel and failed to provide her client's case file to his new counsel.

8. ER 8.4(d) prohibits a lawyer from engaging in conduct prejudicial to the administration of justice. Respondent did not perform work that her client hired her to perform and has impeded successor counsel's ability to assist her client by failing to provide her with her case file.

### **CONDITIONAL ADMISSIONS**

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that her conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 1.4, 1.5, 3.1, and 8.4(d), and Rule 54(d).

### **SANCTION**

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: Reprimand and 18 months probation including restitution.

### **PROBATION**

#### **LOMAP:**

As a term of that probation, Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7258, within thirty (30) days of the date of acceptance of this agreement. Respondent shall submit to a LOMAP examination of her office's procedures, including, but not limited to, client relations. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will begin to run from the date of the Judgment and Order and will conclude eighteen months from that date. Respondent shall be responsible for any costs associated with LOMAP.

#### **Practice Monitor:**

As a term of probation, Respondent shall obtain a practice monitor approved by LOMAP and Bar Counsel who will advise Respondent concerning litigation questions and assist her regarding law practice management and ethics.

### **RESTITUTION**

Respondent agrees to issue a full refund of \$5,660 to Complainant Topoozian in Count I and a partial refund of \$2,500 to Charles Poore, Complainant's client in

Count II. Respondent's position is that due to the personal issues , detailed in documents submitted with Respondent's Request for Protective Order filed June 4, 2014, she will need eighteen months starting from the date of the filing of this Consent Agreement to make such payments. She proposes that she be permitted to pay \$314.45 to Complainant Topoozian on the fifth day of every month, beginning the first month following the date of the Judgment and Order, until the restitution is paid in full. She further proposes that she be permitted to pay \$138.89 on the fifth day of every month to Charles Poore, beginning the first month following the date of the Judgment and Order, until the restitution is paid in full. The State Bar takes no position concerning the reasonability of Respondent's proposed payment plan.

#### **COSTS**

Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in accordance with the Final Judgment and Order.

#### **NON-COMPLIANCE LANGUAGE**

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

## **LEGAL GROUNDS IN SUPPORT OF SANCTION**

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

The parties agree that Standard 4.43 is the appropriate Standard given the facts and circumstances of this matter. Standard 4.43 provides that Censure [Reprimand] is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

### **The duty violated**

As described above, Respondent's conduct violated her duty to her clients, the profession and the legal system.

### **The lawyer's mental state**

For purposes of this agreement the parties agree that Respondent negligently violated the ethical rules and that her conduct was in violation of the Rules of Professional Conduct.

**The extent of the actual or potential injury**

For purposes of this agreement, the parties agree that there was actual harm to the client and the legal system.

**Aggravating and mitigating circumstances**

The presumptive sanction in this matter is Reprimand. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

**In aggravation:**

Standard 9.22(c): a pattern of misconduct.

Standard 9.22(d): multiple offenses.

Standard 9.22(h): vulnerability of victim.

**In mitigation:**

Standard 9.32(a): absence of a prior disciplinary record.

Standard 9.32(c): personal problems. (See documents submitted with Respondent's Request for Protective Order filed June 4, 2014, and letter from Respondent attached hereto as Exhibit "C").

Standard 9.32(g): character or reputation. (See documents submitted with Respondent's Request for Protective Order filed June 4, 2014).

**Discussion**

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. Based on the

*Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

**CONCLUSION**

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Reprimand with Probation and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "C."

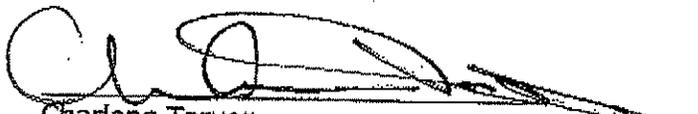
DATED this 13<sup>th</sup> day of January 2015

State Bar of Arizona

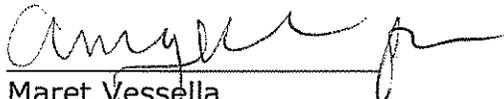
  
\_\_\_\_\_  
Hunter F Perimeter  
Staff Bar Counsel

**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation**

DATED this 13<sup>th</sup> day of January, 2015.

  
\_\_\_\_\_  
Charlene Tarver  
Respondent

Approved as to form and content

  
Maret Vessella  
Chief Bar Counsel

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 13<sup>th</sup> day of January, 2015.

Copies of the foregoing mailed/emailed  
this 13<sup>th</sup> day of January, 2015, to:

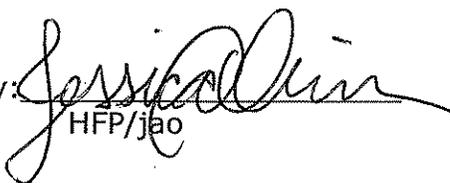
Charlene Tarver  
Tarver Law Group  
2999 North 44<sup>th</sup> St., Ste 306  
Phoenix, AZ 85018  
Respondent

Copy of the foregoing emailed  
this 13<sup>th</sup> day of January, 2015, to:

William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
Email: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

Copy of the foregoing hand-delivered  
this 13<sup>th</sup> day of January, 2015, to:

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

by:   
HFP/jao

**EXHIBIT "A"**

**Statement of Costs and Expenses**

In the Matter of a Current Member of the State Bar of Arizona,  
Charlene Tarver, Bar No. 025926, Respondent

File No(s). 13-3119, 14-0708

**Administrative Expenses**

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

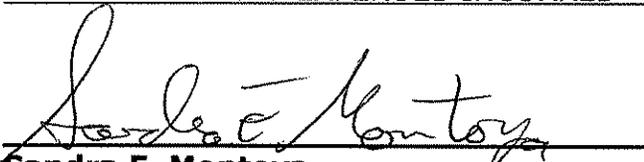
**General Administrative Expenses  
for above-numbered proceedings** **\$1,200.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

**Staff Investigator/Miscellaneous Charges**

Total for staff investigator charges \$ 0.00

**TOTAL COSTS AND EXPENSES INCURRED** **\$ 1,200.00**

  
**Sandra E. Montoya**  
**Lawyer Regulation Records Manager**

12-8-14  
**Date**

**EXHIBIT "B"**

January 8, 2015

Honorable William J. O'Neil  
Presiding Disciplinary Judge  
Office of the Presiding Disciplinary Judge  
1501 W. Washington  
Phoenix, AZ 85007-3231

Re: State Bar File No.s 13-3119, 14-0708

Dear Judge O'Neil:

Dealing with the demands of my family and firm, along with health issues resulting from an auto accident that happened in the midst of the events at issue here, combined with Ms. Topoozian's cross country travel, Mr. Poore's declining health, and technical issues following the relocation of my office, it became very difficult for my firm to provide the level of engagement both clients required. I realize in hindsight that my own health and technical challenges interfered with my representation of both Mr. Poore and Ms. Topoozian, and that I should have ended the representation. I extend my sincerest apologies to them both, because the end results did not at all reflect my legal skill or passion in representing them.

**I. Count I- Nancy Topoozian**

I took Ms. Topoozian's case solely because I truly and wholeheartedly believed it had merit, and that there was a reasonable basis for her to challenge the current law in Arizona. I realized at the time I commenced representing Ms. Topoozian that her matter was time-sensitive, that she was departing for a cross-country trip, and that there might be challenges with the consistency of our correspondence. However, I did not at all anticipate the strain my office and technical issues would play in our communication, or just how the degree and frequency of her requests for information (and her unavailability to meet or talk by phone) would impact our representation or my ability to meet the filing deadlines.

Given the facts presented, and the Court's acknowledgement of medical contracts in other jurisdictions, I disagreed that breach of medical contract was a frivolous cause of action in this matter. I articulated case law to the court in support of a medical contractual relationship between a doctor and patient, and my intent was to make a good faith argument that Topoozian was the type of plaintiff such case law was designed to protect—one who sought purely elective cosmetic surgery based upon the doctor's assurance of a desired outcome.

Matters ripe for appeal often times form the basis for changes to the law. At the time of my representation, I believed that this case fit squarely within that category, especially given the

elective nature and predictability of cosmetic surgery, and the number of new plastic surgery sites opening throughout Arizona. I emphatically believe that the role of a lawyer is to advocate for their client, even to the extent of challenging existing law, where the facts warrant. I advised Ms. Topoozian that this case might be dismissed, and might require appeal, given its very nature. I regret that the attorney client relationship deteriorated such that Ms. Topoozian and I were unable to pursue such an appeal.

## **II. Count II- Charlie Poore**

I've worked with the senior population for more than 15 years. A large motivator in opening my law practice was the desire to provide legal services to seniors.

Given my prior experience in working with seniors, and a heightened awareness to "vulnerable senior" issues, "undue influence," and "duress," I am very sensitive to the importance of determining whether a client understands the decisions they're making, and that those decisions are voluntary. In representing Mr. Poore, I believed it was imperative that he understand the boundaries of the law, and that he could not be granted guardianship or conservatorship over someone who possesses capacity and vehemently opposed him serving as such. As his legal counsel, I believed that my job was to help him understand his rights, under the law, regarding his wife. I began preparing documents for Mr. Poore, but was unable to file them after performing my due diligence and determining that his wife was lucid and did not want him to serve as her guardian or conservator.

I did not contact the Attorney General's Office to determine whether Mr. Poore was coercing his wife - rather to have them commence an investigation of the "two Brendas". I explained this to Mr. Poore in advance, and he agreed to it. I also believed these steps were necessary to create a paper-trail if he later needed to bring an action against the two Brendas for senior abuse. Subsequently, I believed it would defray costs to the client. Mr. Poore was aware that I followed through on this step, and representatives from the Attorney General's Office discussed the referral with him. At no point did he express any objection. Essentially, I took what I believed at that time was the appropriate means to resolve the issues, and the Attorney General's Office found no misconduct or wrongdoing on my part.

Unfortunately, due to my office relocation and technical difficulties with our phone lines, internet access/emails, and US Postal mail, I did not receive Ms. Leonard's correspondence, beyond the initial contact. From there, I instructed my then office admin to forward the file contents to Ms. Leonard. I regret that I did not properly certify the correspondence, and that given the client's vulnerability, I did not follow up with counsel to smooth the transition.

## **III. Communications with the AZ State Bar**

While I admit that I did not respond to Bar Counsel's June 20<sup>th</sup> and 23<sup>rd</sup> emails; I maintain that is solely because I did not receive them.

In no way did I intend to thwart the investigatory efforts of the State Bar. During the screening investigation, I provided multiple comprehensive written responses to the Bar's request for

information. Consequently, the Bar's investigation revealed a number of technical and infrastructure issues with my firm's vendors and operations, namely in the areas of communications and technology - emails, phone lines, and internet access; all of which posed challenges and caused delays in my receiving and at times responding to the Bar's inquiries.

In closing, I understand that my health and office relocation challenges posed problems in representing Ms. Topoozian and Mr. Poore. I extend my sincerest apologies to them both, and I am working diligently to improve our office technology and client engagement.

Sincerely,



Charlene Tarver

# **EXHIBIT "C"**

IN THE  
**SUPREME COURT OF THE STATE OF ARIZONA**  
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE  
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**Charlene Tarver,  
Bar No. 025926,**

Respondent.

**PDJ 2014-\_\_\_\_\_**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 13-3119 and 14-0708]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on \_\_\_\_\_, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** that Respondent, **Charlene Tarver**, is hereby Reprimanded and shall be placed on Probation for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective from the date of this order or \_\_\_\_\_.

**IT IS FURTHER ORDERED** that, Respondent shall be placed on probation for a term of eighteen (18) months. The period of probation shall commence upon entry of this final judgment and order and will conclude eighteen (18) months from that date.

**IT IS FURTHER ORDERED** that as a term of that probation, Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7258, within thirty (30) days of the date of the order.

Respondent shall submit to a LOMAP examination of her office's procedures, including, but not limited to, client relations. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will begin to run on the date of the Judgment and Order and will conclude eighteen (18) months from that date. Respondent shall be responsible for any costs associated with LOMAP.

**IT IS FURTHER ORDERED** that as a term of probation, Respondent shall obtain a practice monitor approved by LOMAP who will advise Respondent concerning litigation questions and supervise her regarding law practice management and ethics.

**IT IS FURTHER ORDERED** that as part of her probation, Respondent will be required to make restitution in the amount of \$5,660 to the Complainant, Nancy Topoozian, in Count I and restitution in the amount of \$2,500 to Complainant's client, Charles Poore, in Count II. Due to financial hardship, Respondent will make monthly payments in Count I in the amount of \$314.45 on the fifth of every month, beginning the first month following the date of the Judgment and Order, until the restitution is paid in full. Respondent will make monthly payments of \$138.89 in Count II on the fifth of every month, beginning the first month following the date of the Judgment and Order, until the restitution is paid in full.

#### **NON-COMPLIANCE LANGUAGE**

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached

and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00, within thirty (30) days from the date of service of this Order.

**DATED** this \_\_\_\_\_ day of January, 2015

---

**William J. O'Neil, Presiding Disciplinary Judge**

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this \_\_\_\_\_ day of January, 2015.

Copies of the foregoing mailed/emailed  
this \_\_\_\_\_ day of January, 2015.

Charlene Tarver  
Tarver Law Group  
2999 North 44<sup>th</sup> Street, Ste 306  
Phoenix, AZ 85018  
Email: ctarver@tarverlaw.org

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_ day of January, 2015, to:

Hunter F. Perlmeter  
Staff Bar Counsel - Litigation  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Copy of the foregoing hand-delivered  
this \_\_\_\_ day of January, 2015 to:

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

by: \_\_\_\_\_