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Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**EDWARD H. BRITT,  
Bar No. 021689,**

Respondent.

**PDJ 2020-9113**

**State Bar File No. 18-1077**

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

The State Bar of Arizona, and Respondent Edward H. Britt, who is represented in this matter by counsel, Geoffrey M.T. Sturr and Joshua D. Bendor, hereby submit their Agreement for Discipline by Consent pursuant to Rule 57(a),

Ariz. R. Sup. Ct.<sup>1</sup> 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. This Consent Agreement was entered into after a settlement conference conducted by settlement officer Scott Palumbo.

Pursuant to Rule 53(b)(3), notice of this agreement was provided to the complainant by letter/email on June 17, 2021. Complainant has been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. Copies of Complainant's objection, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.7(b). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: **Admonition**. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order. If costs are not paid within the 30 days interest will begin to

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<sup>1</sup> All references to rules are to the Arizona Rules of the Supreme Court unless stated otherwise.

accrue at the legal rate.<sup>2</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

## **FACTS**

### **GENERAL ALLEGATIONS**

1. Respondent was licensed to practice law in Arizona on December 16, 2002.
2. Respondent eventually transitioned away from legal practice. He has been on inactive status since April 23, 2019.

### **COUNT ONE (File no. 18-1077/Wakefield)**

3. In 2005, Respondent met Complainant Jason Wakefield and they became friends.
4. In 2006, Respondent and Wakefield became members of Britt Medical, LLC. Britt Medical, LLC has never done any business.
5. In 2008, Respondent, Wakefield and Stephen Weintraub became members of Ethos Medical, LLC.

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<sup>2</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.

6. Wakefield was employed by Advanced Medical Services Corporation (“AMS”); his employment relationship with AMS ended in 2009.

7. On January 22, 2010, Wakefield, represented by Respondent, filed a lawsuit against AMS and other defendants for unpaid commissions.

8. On March 17, 2010, the defendants answered and filed a counterclaim against Wakefield. The defendants claimed Wakefield used Britt Medical, LLC and/or Ethos Medical, LLC, to conceal income he tortiously diverted from AMS.

9. On March 21, 2010, Respondent presented to Wakefield, and Wakefield signed, a form entitled “DISCLOSURE OF BUSINESS TRANSACTION & INFORMED CONSENT”. The form described, among other things, Respondent’s roles in Britt Medical, LLC and Ethos Medical LLC, which were limited to sharing in profits only to the extent he generated any profits through his efforts. At a contested hearing the State Bar would claim that the March 21, 2010 form constituted an ER 1.8(a) written informed consent Respondent should have obtained years earlier. Respondent would deny he represented Wakefield in the formation of either LLC such that an ER 1.8(a)-compliant written informed consent was not necessary. Rather, the March 21, 2010 form was intended to head off AMS’s anticipated effort to disqualify Respondent as Wakefield’s counsel based on a

conflict of interest claim, something both Respondent and Wakefield wanted to avoid.

10. On June 9, 2010, the defendants moved for leave to assert counterclaims against Respondent; Ethos Medical, LLC; and Britt Medical, LLC. The defendants claimed Wakefield, Respondent, and their two LLCs used the LLCs to conceal income Wakefield derived from AMS-based transactions about which AMS did not know, contrary to the terms of Wakefield's employment at AMS. Respondent did not then seek and obtain Wakefield's written consent to continue representing him notwithstanding the potential counterclaims against him.

11. On June 25, 2010, while that motion was pending, the defendants moved to disqualify Respondent as counsel. Defendants asserted that because Respondent was identified in public records as a member of Britt Medical, LLC and Ethos Medical, LLC, which allegedly competed with AMS, Respondent had an indirect financial and personal interest in the outcome of this lawsuit and should be disqualified under ER 1.8(i). They argued that Respondent's claim to have a "non-economic" interest in Britt Medical and Ethos Medical was not supported by the public records on which the motion rested. They also argued Respondent could be a witness in the case.

12. Because Britt Medical, LLC never did business, and Respondent did not generate any business for Ethos Medical, LLC, Respondent's position was and is that he had only a noneconomic interest in both LLCs. On July 9, 2010, Respondent filed a response to the motion to disqualify reconfirming his previous statement to Defendants' counsel that his interest in the LLCs was a noneconomic interest. The response was supported by affidavits from all members of the LLCs (Respondent, Wakefield, and Steven Weintraub).

13. On September 7, 2010, the court denied the motion to disqualify and granted the motion for leave to assert counterclaims against Respondent and the two LLCs.

14. After the court's ruling, Respondent obtained Wakefield's written consent to continue the representation of him in the AMS litigation notwithstanding the potential conflict arising from the assertion of counterclaims against him, as memorialized in an Informed Consent Agreement dated October 15, 2010.

15. On October 20, 2010, Defendants filed the counterclaims against Respondent and the LLCs.

16. On November 19, 2010, Wakefield, through Respondent, notified the Court that the parties had settled.

17. As alleged in Paragraphs 56-126 of the State Bar's Complaint, in 2014, Wakefield and Respondent went into business together. That business relationship eventually fell apart, leading to a lawsuit that was filed in Maricopa County Superior Court, Case No. CV2015-013984, by Aspen Biotech Corporation and Applied Biologics LLC against Wakefield and others. Wakefield brought counterclaims against Aspen Biotech, Respondent and others. The claims and counterclaims were tried to a jury in October 2019. A jury returned a verdict for Wakefield against Respondent on some claims and for Respondent against Wakefield on other claims. The court dismissed some of Wakefield's other claims prior to trial and for purposes of assessing attorney's fees ruled that Respondent was the prevailing party. Wakefield filed an appeal, which is pending.

### **CONDITIONAL ADMISSIONS**

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation. Respondent conditionally admits that he violated ER 1.7(b) by not addressing the potential conflict of interest arising from the motion filed by the Defendants in the AMS litigation to assert counterclaims against him when that motion was filed.

## **CONDITIONAL DISMISSALS**

The State Bar conditionally dismisses the charges that Respondent violated ERs 1.5(b), 1.8(a)(1), (2) and (3), 3.3(a)(1) and (3), 5.5, 8.4(c), and 8.4(d) based on evidentiary concerns and in light of extensive discussions between and among counsel for the parties and the settlement officer regarding the quantum of evidence required to prove violations of those Rules, which resulted in this Consent Agreement. The parties appreciate the assistance of the settlement officer in reaching this Agreement

## **RESTITUTION**

Restitution is not an issue in this matter.

## **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 sanctions are appropriate: Admonition.

## **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 determining an appropriate sanction the Court considers 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. *Standard* 3.0.

**The duty violated**

The parties agree that Respondent violated duties owed to a client and to the legal system.

**The lawyer's mental state**

The parties agree that Respondent acted negligently with respect to the duties at issue.

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

The parties agree that there was potential harm to the client.

The parties agree that *Standard* 4.34 is the appropriate *Standard* given the facts and circumstances of this matter.

*Standard 4.34* provides: “Admonition is generally appropriate when a lawyer engages in an isolated incidence of negligence in determining whether the representation of a client may be materially affected by the lawyer’s own interests . . . and causes little or no actual or potential injury to a client.”

**Aggravating and mitigating circumstances**

The presumptive sanction is Admonition. The parties conditionally agree that the following aggravating and mitigating factors should be considered but do not warrant an upward or downward adjustment to the sanction:

**In aggravation: *Standard 9.22*—**

- (i) Substantial experience in the practice of law. Despite being admitted to practice law in Arizona in 2002, Respondent has not continually practiced law since that time; hence this aggravating factor should be given less weight than it should otherwise be given.

**In mitigation: *Standard 9.32*—**

- (a) Absence of a prior disciplinary record;
- (e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

### **Discussion**


The parties conditionally agree that upon application of the aggravating and mitigating factors the presumptive sanction is appropriate; a greater or lesser sanction is not appropriate; and the aggravating and mitigating factors do not support a departure from the presumptive sanction. 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. *In re Peasley*, 208 Ariz. 27 (2004). 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 Admonition and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

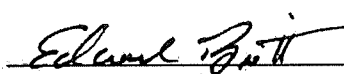
**DATED** this 16th day of June 2021.

STATE BAR OF ARIZONA

  
David Sandweiss  
Sr. Bar Counsel

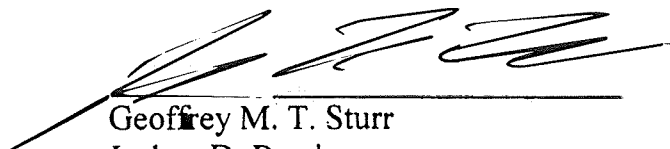
**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.**

DATED this 16<sup>th</sup> day of June, 2021.

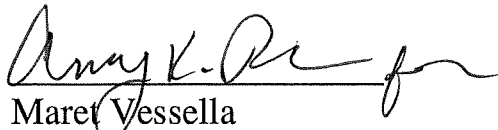
  
Edward H. Britt  
Respondent

DATED this 16<sup>th</sup> day of June, 2021.

Osborn Maledon, P.A.

  
Geoffrey M. T. Sturr  
Joshua D. Bendor  
Counsel for Respondent

Approved as to form and content

  
Mary 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 16<sup>th</sup> day of June, 2021.

Copy of the foregoing emailed  
this 16<sup>th</sup> day of June, 2021, to:

The Honorable Margaret H. Downie  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
1501 West Washington Street, Suite 102  
Phoenix, Arizona 85007  
E-mail: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

Copy of the foregoing emailed  
this 16<sup>th</sup> day of June, 2021, to:

Geoffrey M. T. Sturr  
Joshua D. Bendor  
Osborn Maledon, P.A.  
2929 North Central Avenue, Suite 2100  
Phoenix, AZ 85012-2765  
Email: [gsturr@omlaw.com](mailto:gsturr@omlaw.com), [jbendor@omlaw.com](mailto:jbendor@omlaw.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 16<sup>th</sup> day of June, 2021, to:

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

by: Amy S. Kalston

**EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona  
Edward H. Britt, Bar No. 021689, Respondent

File No. 18-1077

### 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.

### Additional Costs

Total for additional costs \$ 0.00

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

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**EXHIBIT B**

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**EDWARD H. BRITT,  
Bar No. 021689,**

**PDJ 2020-9113**

**FINAL JUDGMENT AND  
ORDER**

State Bar No. 18-1077

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

Accordingly:

**IT IS ORDERED** that Respondent, **Edward H. Britt**, is **Admonished** for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

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

**IT IS FURTHER ORDERED** that 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 the amount of \_\_\_\_\_, within 30 days from the date of service of this Order.

**DATED** this \_\_\_\_\_ day of June, 2021.

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**Margaret H. Downie, 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 June, 2021.

Copies of the foregoing emailed this \_\_\_\_\_ day of June, 2021, to:

Geoffrey M. T. Sturr  
Joshua D. Bendor  
Osborn Maledon, P.A.  
2929 North Central Avenue, Suite 2100  
Phoenix, AZ 85012-2765  
Email: gsturr@omlaw.com, jbendor@omlaw.com

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_ day of June, 2021, to:

David Sandweiss  
Senior Bar Counsel  
State Bar of Arizona  
4201 N 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 June, 2021 to:

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

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

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**EDWARD H. BRITT,**  
**Bar No. 021689**

Respondent.

**PDJ 2020-9113**

**DECISION ACCEPTING  
AGREEMENT FOR DISCIPLINE  
BY CONSENT**

[State Bar No. 18-1077]

**FILED JULY 29, 2021**

A probable cause order issued on August 31, 2020, and the State Bar filed a formal complaint on November 30, 2020. On June 16, 2021, the parties filed an Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct. The State Bar is represented by Senior Bar Counsel David L. Sandweiss, and Mr. Britt is represented by Geoffrey M.T. Sturr and Joshua D. Bendor.

Contingent on approval of the proposed form of discipline, Mr. Britt has voluntarily waived the right to an adjudicatory hearing, as well as all motions, defenses, objections, or requests that could be asserted. Pursuant to Rule 53(b)(3), notice of the consent agreement was sent to complainant Jason Wakefield, who, through counsel, filed a comprehensive objection to the Agreement. Mr. Wakefield believes that a suspension of six months and one day is the appropriate sanction.

On June 29, 2021, the PDJ ordered the parties respond to the complainant's objection and to address Standard 4.33 of the ABA Standards for Imposing Lawyer Sanctions. The parties filed a joint response on July 22, 2021. They state that the Agreement was the result of extensive settlement discussions and negotiations and explain the basis for the State Bar's conditional dismissal of the alleged violations of ERs 1.8(a), 5.5, 8.4(c), and 8.4(d). The parties stress the standard of proof applicable to these proceedings (clear and convincing evidence) and note evidentiary concerns related to the conditionally dismissed charges. The parties continue to maintain that an admonition is appropriate under ABA Standard 4.34 for a single negligent violation of ER 1.7.

Although the PDJ understands and appreciates complainant's concerns, the parties' submissions persuade the PDJ that the Agreement is appropriate. The Agreement details a factual basis to support the conditional admissions and is incorporated by reference. *See* Rule 57(a)(4). Mr. Britt admits that he violated Rule 42, ER 1.7(b) (conflict of interest/current clients). As a sanction, the parties agree to issuance of an admonition plus the payment of costs to the State Bar in the sum of \$1,200.00 within 30 days of the date of service of the final judgment and order.

Based on the conditional admissions, the presumptive sanction is an admonition under § 4.34 of the ABA Standards. The parties stipulate to the existence of aggravating factor 9.22(i) (substantial experience in the practice of law). They

further stipulate to the existence of mitigating factors 9.32(a) (absence of a prior disciplinary record) and 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude towards proceedings). After balancing the one aggravating factor against the two mitigating factors, the presumptive sanction under the ABA Standards remains appropriate.

**IT IS ORDERED** accepting the Agreement for Discipline by Consent. A final judgment and order is signed this date.

**DATED** this 29<sup>th</sup> day of July 2021.

*Margaret H. Downie*

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**Margaret H. Downie**  
**Presiding Disciplinary Judge**

COPY of the foregoing e-mailed  
this 29<sup>th</sup> day of July 2021 to:

David L. Sandweiss  
Senior Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016-6288  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Geoffrey M. T. Sturr  
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Email: [gsturr@omlaw.com](mailto:gsturr@omlaw.com)  
[jbendor@omlaw.com](mailto:jbendor@omlaw.com)  
Respondent's Counsel

by: SHunt

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**EDWARD H. BRITT,**  
**Bar No. 021689**

Respondent.

**PDJ 2020-9113**

**FINAL JUDGMENT  
AND ORDER**

[State Bar No. 18-1077]

**FILED JULY 29, 2021**

The Presiding Disciplinary Judge accepted the parties' Agreement for Discipline by Consent submitted pursuant to Rule 57(a), Ariz. R. Sup. Ct.

**IT IS ORDERED** that Respondent **EDWARD H. BRITT, Bar No. 021689**, is admonished for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

**IT IS FURTHER ORDERED** that Respondent shall pay the costs and expenses of the State Bar of Arizona in the sum of \$1,200.00 within 30 days from the date of service of this order. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in this proceeding.

**DATED** this 29<sup>th</sup> day of July 2021.

*Margaret H. Downie*

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**Margaret H. Downie**  
**Presiding Disciplinary Judge**



Copies of the foregoing emailed  
this 29<sup>th</sup> day of July 2021, to:

Geoffrey M. T. Sturr  
Joshua D. Bendor  
Osborn Maledon, PA  
2929 North Central Avenue, Suite 2100  
Phoenix, AZ 85012-2765  
Email: [gsturr@omlaw.com](mailto:gsturr@omlaw.com) and [jbendor@omlaw.com](mailto:jbendor@omlaw.com)  
Respondent's Counsel

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Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: SHunt