BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

IN MEDICINE AND SURGERY

IN THE MATTER OF: **STEPHEN MCKAY, D.O.,** Holder of License No. **3941** For the practice of osteopathic medicine in the State of Arizona	**Case No.: 3955** **CONSENT AGREEMENT TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

By mutual agreement and understanding, the Arizona Board of Osteopathic Examiners (hereafter "Board") and Stephen McKay, D.O. (hereinafter "Respondent"), the parties, hereto agree to the following disposition to this matter.

1. Respondent acknowledges that he has read this Consent Agreement and Order; and, Respondent is aware of and understands the content of these documents.

2. Respondent understands that by entering into this Consent Agreement and Order, he voluntarily relinquishes any rights to a hearing on the matters alleged as grounds for Board action or to seek judicial review of the Consent Agreement and Order in state or federal court.

3. Respondent understands that this Consent Agreement and Order will not become effective unless approved by the Board and signed by its Executive Director.

4. Respondent further understands that this Consent Order and Order, once approved and signed, shall constitute a public record which will be disseminated as a formal action of the Board.

5. Respondent admits to the statement of facts and conclusions of law contained in the Consent Agreement and Order.

6. All admissions made by Respondent are solely for final disposition of this matter and any subsequent administrative proceedings or litigation involving the Board, Respondent and

the State of Arizona; and, therefore, said admissions by Respondent are not intended for any other purpose or administrative regulatory proceeding or litigation in another state or federal court.

7. Respondent acknowledges and agrees that upon signing and returning this document (or a copy thereof) to the Board's Executive Director, he may not later revoke or amend any part of the Consent Agreement and Order, without first obtaining Board approval.

REVIEWED AND ACCEPTED THIS 29 DAY OF September, 2008.

Stephen McKay, D.O., Respondent

Frederick M. Cummings, Esq

JURISDICTIONAL STATEMENTS

1. The Board is empowered, pursuant to A.R.S. §§ 32-1800 et seq. to regulate the licensing and practice of osteopathic medicine in Arizona.

2. The Board has the authority to informally dispose by stipulation, agreed settlement, consent order or default pursuant to A.R.S. § 41-1092.05 (F)(5).

3. Respondent holds license No. 3941 to practice osteopathic medicine in Arizona.

FINDINGS OF FACT

1.. Information was brought to the attention of the Board on or about September 26, 2007 that the Respondent was the main subject of a criminal investigation by the Prescott Police Department identified as D.R. Case#: 07-35251.

2. The allegations indicate that Respondent may have illegally diverted prescription medications for personal use by forging another physician's prescription form and submitting it to a CVS Pharmacy.

3. The allegations also indicate that Respondent may have been illegally prescribing medication to others, including his wife, for personal use.

4. The Arizona Board of Osteopathic Examiners in Medicine and Surgery ("Board") reviewed this matter at an emergency Board meeting on September 29, 2007. Having considered the information in the matter and being fully advised, the Board entered an Interim Findings of Fact, Interim Conclusions of Law and Order for Summary Suspension of License No. 3941, pending formal hearing or other board action.

5. Respondent entered into a residential treatment program at Hazelden Springbrook and was discharged with staff approval and recommended aftercare treatment.

6. Respondent entered into a plea agreement resulting in criminal felony charges arising out of these events and placed on probation. If Respondent successfully completes the terms of the probation, the charges would be reduced to misdemeanors.

CONCLUSIONS OF LAW

1. The conduct described in Findings of Fact 3 through 4 herein constitutes unprofessional conduct as defined by the following A.R.S. § 32-1854 subsections:

(2) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude.

(5) Prescribing, dispensing or administering controlled substances or prescription only drugs for other than accepted therapeutic purposes.

(22) Using controlled substances or prescription-only drugs unless they are provided by a medical practitioner, as defined in section 32-1901, as part of a lawful course of treatment.

(23) Prescribing controlled substances to members of one's immediate family unless there is no other physician available within fifty miles to treat a member of the family and an emergency exists.

ORDER

NOW, THEREFORE, IT IS ORDERED AS FOLLOWS:

Pursuant to A.R.S. § 32-1855 (E)(4), License No. 3941 held by Stephen McKay, D.O., ("Respondent") shall be **CENSURED** and placed on **PROBATION** for **FIVE (5) years** from the date of this order with the following terms and conditions of probation as set forth herein:

1. Respondent shall not practice medicine until such time as he successfully completes an in-patient evaluation and in-patient treatment program as recommended by a

treatment and care facility approved by the Executive Director. Respondent must adhere to any and all recommendations of his evaluators upon release form the in-patient treatment program and appear before the Board prior to practicing medicine in the State of Arizona. In addition, Respondent shall not engage in the practice of medicine for more than twenty (20) hours per week for three (3) months from the date of this order at which time Respondent shall come before the Board to request a modification of this term. Respondent enrolled into and completed a 120 day inpatient evaluation and treatment program at Hazelden Springbrook prior to finalizing this consent agreement.

2. Respondent will develop/maintain a plan for treatment and monitoring which shall include, but may not be limited to, individual and/or group counseling sessions, pain management contracts, random body fluid testing, agreement for release of treatment records and reports to the Board, prohibition of the use of alcohol and controlled substances unless the latter is prescribed or coordinated by his treating physician, and regular meetings with the Board, and submit this plan to the Board for its approval. It is noted that Respondent has been participating in a treatment and monitoring program under the supervision of Michael Sucher, MD, since April 2008, which has included group counseling and random testing prior to finalizing this consent agreement.

3. From the date of this Order, Respondent shall obtain treatment by a therapist(s) who is selected by Respondent and approved by the Board. Respondent shall comply with the therapist recommendation for the frequency of therapy treatment sessions. Respondent shall inform the Board by letter (mailed within ten days of the date of this Order) of the therapist's name; and, Respondent shall undertake and fully cooperate with a program of treatment established by the therapist. In the event Respondent changes therapists, he shall give the Board written notice within ten (10) days of said action. Respondent shall not discontinue or reduce the

frequency of therapy sessions until he has submitted a written request to the Board and obtained Board approval.

4. Respondent's therapist(s) shall receive a copy of this Order and Board staff shall cooperate with and disclose all relevant information in the Board's files concerning Respondent. The treating therapist shall be directed by Respondent to send to the Board a detailed written progress report every month for the remainder of the probation; and Respondent shall waive any confidentiality with the Board concerning his therapy in order that the Board may receive full disclosure of information. The expense of the aforementioned therapy and the reports to the Board by Respondent's therapist shall be the sole responsibility of the Respondent.

5. Respondent shall provide a copy of this Order and any subsequent Orders to all facilities where Respondent is currently (or subsequently) employed as a physician and/or has (or subsequently receives) privileges to engage in the practice of medicine. Respondent shall provide a copy of this Order to all treating physicians, dentists and or health care professionals. Respondent shall continue to make the aforementioned disclosure and provide copies of this Consent Order until the expiration of this Order.

6. Respondent may have his license to practice as an osteopathic physician restricted, suspended or revoked by the Board in the future if:

(a) The Board finds that Respondent does not have the requisite mental, physical and emotional fitness to safely continue the practice of medicine; or,
(b) There are new grounds for finding unprofessional conduct concerning Respondent; or,
(c) Fails to comply fully with the terms and conditions of this Order.

7. Respondent shall abstain completely from the consumption of alcoholic beverages or any substance with alcohol (i.e., mouth wash, cough syrups); and, Respondent shall not consume illicit drugs or take any controlled substances (i.e., prescription only drugs), unless his treating physician prescribes such medication for him with the awareness that Respondent has a substance abuse disorder. Respondent shall maintain a monthly log (for the duration of

probation) of all prescription only drugs taken by him and such log shall include the following information:

(a) the name of the medication;
(b) name of prescribing physician;
(c) reason for the medication.

8. At the first of each month, Respondent shall report by letter to the Board whether or not he is taking any prescription only medication and, if so, a copy of his log reflecting the above information.

9. Respondent shall also, as part of his probation: (A) submit to and cooperate in any independent medical or psychological evaluation that is ordered by the Board for Respondent and conducted by the Board's designated physician and/or psychologist which shall be paid for by Respondent; and (B) appear before the Board, upon receipt of a request by written or telephonic notification from the Board's executive director which shall be given at least five (5) days prior to the Board meeting; and, (C) submit to random biological fluid testing and promptly provide (i.e., within sixty (60) minutes of notification) required biological fluids for testing and said testing shall be done at the Respondent's expense.

10. In the event Respondent moves and ceases to practice medicine in Arizona, he shall give written notice to the Board of his new residence address within twenty (20) days of moving; and, the terms and duration of probation may be stayed by the Board until Respondent returns to practice medicine in Arizona.

11. Respondent shall reimburse the Board for all expenses associated with the continued monitoring of this matter.

12. Respondent shall continue to meet all licensing requirements such as continuing medical education and renewal requirements including applicable fees pursuant to A.R.S. § 32-1825.

13. The Board's Executive Director shall send correspondence to the appropriate state and/or federal law enforcement agency disclosing information in the Board's possession which may establish criminal misconduct by Respondent, i.e., illicit use of controlled substances.

14. Respondent's failure to comply with the requirements of this Order shall constitute unprofessional conduct as defined at A.R.S. § 32-1854(26), as amended, and may be considered as grounds for further disciplinary action (e.g., suspension or revocation of license) in the event that Respondent fails to comply with any of the requirements of this Order.

ISSUED THIS 3rd DAY OF October, 2008.
STATE OF ARIZONA
BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

By: Barbara Myers
Barbara Myers, Deputy Executive Director

Original "Consent Agreement"
filed this 3rd day of October, 2008 with the:

Arizona Board of Osteopathic Examiners
In Medicine and Surgery
9535 East Doubletree Ranch Road
Scottsdale AZ 85258-5539

Copy of the foregoing "Consent Agreement" sent via certified, return receipt requested
this 3rd day of October, 2008 to:

Stephen McKay, D.O.
807 Country Club Drive
Prescott, AZ 86303

Frederick M. Cummings, Esq.
Jennings, Strouss & Salmon, PLC
201 East Washington Street, 11th Floor
Phoenix, AZ 85004-2385

Copies of the foregoing "Consent Agreement" sent via regular mail
this 3rd day of October, 2008 to:

Blair Driggs, AAG
Office of the Attorney General CIV/LES
1275 West Washington
Phoenix AZ 85007

Kathy Fowler