BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

IN MEDICINE AND SURGERY

IN THE MATTER OF: **AARON GLOSKOWSKI, D.O.** Holder of License No. **4405** For the practice of osteopathic medicine in the State of Arizona	**No. 10A-DO-10-0132A-OST** **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR REVOCATION**

On March 19, 2011, this matter came before the Arizona Board of Osteopathic Examiners in Medicine and Surgery ("Board") for oral argument and consideration of the Administrative Law Judge ("ALJ") Diane Mihalsky's proposed Findings of Fact and Conclusions of Law and Recommended Order. Dr. Aaron Gloskowski ("Respondent") was not present, nor was his legal counsel of record, James Marovich and Jeffrey Grass. Assistant Attorney General Camila Alarcon represented the State. Christopher Munns, Assistant Attorney General with the Solicitor General's Section of the Attorney General's Office, was available telephonically to provide independent legal advice to the Board.

The Board, having considered the ALJ's decision and the entire record in this matter, and adding Paragraph 3 to the recommended Order, assessing the cost of the formal hearing, hereby issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. A.R.S. §§ 32-1800 to -1871 empower the Arizona Board of Osteopathic Examiners in Medicine and Surgery ("Board") to regulate the licensing and practice of osteopathic medicine in the State of Arizona.

2. The Board issued License No. 4405 to Respondent Aaron Gloskowski, D.O. to practice as an osteopathic physician.

3. On or about July 30, 2010, the Board determined that the public health, safety, and welfare imperatively required the Board to summarily suspend Dr. Gloskowski's license pursuant to A.R.S. § 32-1855(C).

4. The Board referred the matter to the Office of Administrative Hearings ("the OAH"), an independent agency, for an expedited evidentiary hearing.

5. On August 3, 2010, the Board issued a Complaint and Notice of Hearing, scheduling a hearing at the OAH on August 27, 2010, and charging Dr. Gloskowski with unprofessional conduct as defined by A.R.S. § 32-1854(6), (25), (38), and (39).

6. On August 17, 2010, the OAH received a request from Dr. Gloskowski to continue the expedited hearing because he was scheduled to have corrective surgery on his right ear on the date scheduled for hearing.

7. On August 19, 2010, the Administrative Law Judge ("ALJ") issued an order continuing the hearing to September 23, 2010. After the Board's attorney requested that the hearing date be changed because she was not available on September 23, 2010, due to previously scheduled commitments, the ALJ issued a second order, setting the continued hearing on September 10, 2010.

8. The ALJ rescheduled the hearing to September 10, 2010.

9. A hearing was held on September 10, 2010. The Board submitted five exhibits and presented the testimony of two witnesses: (1) Barbara Meyers, the Board's Deputy Director; and (2) Gary Carmack, Ph.D., the Laboratory Director of Southwest Laboratories, Inc. ("Southwest"). Dr. Gloskowski did not appear.

10. On September 24, 2010, local attorney James M. Marovich, Esq. filed a Notice of Appearance and Motion for Rehearing on Dr. Gloskowski's behalf. On September 27, 2010, Mr. Marovich filed a motion to associate Jeffrey C. Glass, Esq., a Texas attorney, as counsel *pro hac vice* for Dr. Gloskowski's defense.

11. Because Dr. Gloskowski had moved from Kearney, Arizona to Phoenix, and it did not appear that he had received actual or constructive notice of the September 10, 2010 continued hearing, the ALJ issued an order setting a further hearing on October 18, 2010, at 8:00 a.m. The ALJ required the Board to provide copies of its exhibits to Dr. Gloskowski's

attorney and to make available the witnesses who had testified at the September 10, 2010 hearing for cross-examination.

12. At Dr. Gloskowski's request, the ALJ continued the further hearing to November 22, 2010, at 8:00 a.m. and admitted Mr. Grass *pro hac vice* to represent Dr. Gloskowski at the further hearing.

13. Mr. Grass and the Board's attorney appeared for the November 22, 2010 further hearing, but Dr. Gloskowski did not. Mr. Grass had no explanation for Dr. Gloskowski's failure to appear, but Mr. Grass requested that the ALJ set a second further hearing to allow Dr. Gloskowski to testify in his defense. The Board's attorney did not object.

14. On December 14, 2010, a second further hearing was held. Mr. Grass cross-examined Ms. Meyers, presented the testimony of Dr. Gloskowski and Rabbi Ray Birnbaum, his sponsor, and submitted one exhibit. The Board presented Ms. Meyers' testimony on rebuttal and submitted one additional exhibit.

HEARING EVIDENCE

The Stipulated Rehabilitation Agreement and Consent Agreement

15. In September 2008, Dr. Gloskowski self-reported to the Board that he was going into in-patient treatment for a substance abuse problem. Board staff informed Dr. Gloskowski that when he was released from treatment, he would be eligible for a confidential Stipulated Rehabilitation Agreement to monitor his sobriety and safety to practice.

16. Ms. Meyers went over the terms of the Stipulated Rehabilitation Agreement, including the requirement for random drug tests, with Dr. Gloskowski. On or about November 21, 2008, Dr. Gloskowski entered into the Stipulated Rehabilitation Agreement.

17. On February 23, 2009, Dr. Gloskowski submitted a biological specimen for testing pursuant to the Stipulated Rehabilitation Agreement. On February 25, 2009, the laboratory that analyzed the specimen informed Board staff that Dr. Gloskowski's specimen had tested positive for methamphetamine.

18. Subsequently, Dr. Gloskowski signed an Interim Order for Practice Restriction, agreeing to refrain from practicing medicine. After Dr. Gloskowski completed and was

discharged from a second in-patient treatment for substance abuse, he entered an intensive outpatient program.

19. On June 30, 2009, Dr. Gloskowski signed a non-confidential Consent Agreement. In the Consent Agreement, Dr. Gloskowski agreed to terms that were substantially similar to the terms of the Stipulated Rehabilitation Agreement, including that he refrain from taking illegal substances, inform the Board of physician-prescribed controlled substances, and submit to random drug tests. As part of the Consent Agreement, Dr. Gloskowski agreed that a positive finding of an illegal drug would be considered proof of relapse, resulting in his license being summarily suspended pending a formal administrative hearing. The Consent Agreement allowed Dr. Gloskowski to resume his practice.

20. The Consent Agreement's terms for random drug tests required Dr. Gloskowski to call an automated telephone message system daily to determine whether he needed to provide a specimen on that day.

21. The Board contracts testing and analysis of biological fluid specimens that licensees submit to Southwest. Southwest is a federally certified facility for the administration and analysis of drug tests.

22. Dr. Carmack has a Ph.D. in toxicology. He has worked for Southwest for 23 years and is currently its Laboratory Director and responsible for overseeing quality control.

Dr. Gloskowski's Evidence of Recovery

23. Dr. Gloskowski testified that his sobriety date was February 21, 2009.

24. Dr. Gloskowski testified that he attends meetings for 12-step programs through AA, NA, or MA three times a week, as required by the Consent Agreement. He has gone through the 12 steps twice, the second time with his current sponsor, Rabbi Birnbaum. In addition, two persons have chosen him to be their sponsor. Sponsors are responsible for "calling" the persons whom they sponsor on relapse behaviors that could lead to drug use.

25. Rabbi Birnbaum operates the Fresh Beginning house, where recovering addicts may live and receive support from each other and the meetings that Rabbi Birnbaum conducts. Rabbi Birnbaum himself is a recovering addict and receives a military pension that allows him to devote his time to recovery programs for others. Rabbi Birnbaum testified that the Fresh

Beginning program has a 90% success rate in keeping addicts from relapse and that most programs have only a 50% success rate.

26. Dr. Gloskowski was referred to the Fresh Beginning house. After he no longer resided there, Rabbi Birnbaum became his sponsor. Rabbi Birnbaum testified that Dr. Gloskowski has maintained his sobriety and that Rabbi Birnbaum would be comfortable in having his family under Dr. Gloskowski's care if the Board restores his license.

27. In May 2010, Dr. Gloskowski started seeing a psychiatrist, who prescribed the amphetamine Vyvanse to treat Dr. Gloskowski's diagnosed Attention Deficit/Hyperactivity Disorder ("ADHD").

28. Dr. Gloskowski testified that the psychiatrist initially prescribed only 50 mg. of Vyvanse per day, which caused him to become overly sedated. Dr. Gloskowski testified that for persons with ADHD, amphetamines have the opposite effect than they have on other people.

29. Dr. Gloskowski testified that he believed that his use of methamphetamine was an attempt to self-medicate, but that his decision to use methamphetamine to manage his ADHD was a "poor choice."

30. Dr. Gloskowski testified that his psychiatrist eventually raised his Vyvanse dosage from 50 mg. per day to 70 mg. per day, and from 70 mg. per day to 100 mg. per day. Dr. Gloskowski testified that that the 100 mg. dose per day of Vyvanse allows him to be more focused, calmer, less sensitive to criticism, and more stable.

31. Dr. Gloskowski testified that initially he was "hesitant" to start taking Vyvanse because he was scared and had "hated his life while he used drugs." Dr. Gloskowski testified that after his psychiatrist pointed out that persons suffering from untreated ADHD were five times more likely to relapse, he agreed to start taking Vyvanse.

32. Until June 2010, the biological specimens that Dr. Gloskowski submitted to comply with the Consent Agreement were valid and tested negative for all prohibited substances.

The June 9, 2010 Drug Test

33. On June 9, 2010, pursuant to the Consent Agreement, Dr. Gloskowski submitted a urine specimen for testing.

34. On June 10, 2010, Southwest reported to Board staff that Dr. Gloskowski's specimen was invalid because its Creatinine level was 1.4 mg/dL, while the cutoff was 20 mg/dL, and its specific gravity was 1.0019, while the cutoff was 1.003.

35. Dr. Carmack testified that if a subject drinks excessive water before submitting a specimen, the specimen will be dilute, or show measurements that are low but within the range produced by humans. Dr. Carmack explained that the Creatinine in Dr. Gloskowski's June 9, 2010 specimen was substantially below the range produced by humans and made the specimen invalid, not dilute.

36. Dr. Gloskowski testified that because he has a "shy bladder," he has to drink large amounts of liquids before attempting to submit a urine specimen for testing. Dr. Gloskowski testified that the specimen he provided on June 9, 2010, may have been dilute, but he did not provide any non-human urine for testing.

The June 11, 2010 Drug Tests

37. On June 10, 2010, Ms. Meyers telephoned Dr. Gloskowski, informed him of Southwest's report of the invalid June 9, 2010 specimen, and asked him to submit an observed urine specimen and hair sample on the next day. Ms. Meyers later left a telephone message for Dr. Gloskowski, instructing him to write "observed" on the chain-of-custody form.

38. Dr. Carmack testified that an observed collection of a urine specimen requires a subject to provide a specimen while someone is watching at close quarters to prevent the subject from substituting the contents of a bottle that the subject has brought with him for the specimen.

39. On June 11, 2010, Dr. Gloskowski provided a urine specimen for testing. Dr. Gloskowski marked "monitored" on the chain-of-custody form for the specimen.

40. Dr. Gloskowski testified that he heard Ms. Meyers tell him to provide a "monitored" specimen. Dr. Gloskowski testified that he thought a monitored specimen was the same as an observed specimen. Dr. Gloskowski testified that he did not receive Ms. Meyers' message to write "observed" on the chain-of-custody form until after he had provided the urine specimen and was on his way home.

41. Ms. Meyers testified that although the Board monitored Dr. Gloskowski's compliance with the Consent Agreement, the word, "monitored," has no meaning in connection with a drug test. Ms. Meyers testified that she expects physicians to be familiar with and to use the correct terms for drug tests.

42. On June 11, 2010, the laboratory to which Dr. Gloskowski was ordered to submit a hair sample notified Board staff that the hair test could not be done because Dr. Gloskowski did not have any head or body hair that was long enough to test.

43. Ms. Meyers testified that although Dr. Gloskowski is bald, in the past he has provided sufficient body hair to test. Ms. Meyers testified that when she spoke to Dr. Gloskowski on June 10, 2010, he did not tell her that he could not provide a hair sample.

44. Dr. Gloskowski testified that his "body hair habitus" had not changed in the past seven or eight years. Although a technician was able to use hair from an armpit for a hair test in 2008, in June 2010, when he arrived to provide a sample, the technician told him that "they didn't have any interest" in testing a hair sample from his armpit. Dr. Gloskowski testified that he therefore left without providing a sample, even though he had hair on his body that was longer than the 1½" that the laboratory required for a test.

45. Dr. Gloskowski denied that he had told the technician that he did not have any body hair because he was a swimmer and shaved his body hair. Dr. Gloskowski testified that he and the technician discussed several sports, including swimming and hiking, and that he mentioned that he was a swimmer.

46. On June 14, 2010, Southwest notified Board staff that the results of Dr. Gloskowski's June 11, 2010 urine specimen were negative for all measured substances, including amphetamine, despite Dr. Gloskowski having been prescribed and taking Vyvanse in May and June, 2010. A valid specimen had been obtained; however, the specimen collected had not been observed because Dr. Gloskowski had written "monitored" instead of "observed" on the chain-of-custody form.

47. Dr. Gloskowski testified that he sometimes "took a break" from his Vyvanse prescription on the weekend. He testified that may not have been taking Vyvanse at the time due to its sedative effect. Dr. Gloskowski admitted that Vyvanse is not an as-needed or "PRN"

medication, that the effects of Vyvanse are cumulative, and that patients should follow their physicians' orders for prescribed medications.

48. On June 16, 2010, Elaine LeTarte, the Board's Executive Director, notified Dr. Gloskowski by letter that collection of all future biological fluid specimens must be observed.

The July 26, 2010 Meeting

49. On July 26, 2010, at Dr. Gloskowski's request, he met with Ms. LeTarte and Ms. Meyers to discuss his health, practice, and compliance with the Consent Agreement. Dr. Gloskowski stated that he was not working as a physician because he and Kearney Clinic, his former employer, had ended his employment by mutual agreement. Dr. Gloskowski testified that Kearney Clinic had paid him three months' salary as severance.

50. Dr. Gloskowski testified that he told Ms. LeTarte and Ms. Meyers that he was going through a difficult divorce and wanted to move back to Phoenix to be closer to his children, and that his wife was threatening to move to the east coast and to take his children with her. In addition, Dr. Gloskowski testified that he was losing his hearing in his right ear and was having panic attacks. Dr. Gloskowski told Ms. LeTarte and Ms. Meyers that due to his relationship and health issues, he did not believe that he should work as a physician.

51. Dr. Gloskowski testified that on July 26, 2010, he discussed with Ms. LeTarte and Ms. Meyers his desire to participate in a program for recovering physicians run by Michael Sucher, M.D. Dr. Gloskowski testified that his ADHD predisposed him to abuse methamphetamine and that Dr. Sucher's program offered the structure and transparency that he needed to better manage his addiction.

52. The Board has referred some physicians to Dr. Sucher in the past. Dr. Sucher's program provides many of the requirements of the Board's usual probation, but because the program costs $800 or $900 per month, not all physicians enroll in the program. At the Board's request, Dr. Sucher conducts monthly meetings that are open to all physicians, regardless of whether they are enrolled in his program. Although the Consent Decree did not require Dr. Gloskowski to participate in Dr. Sucher's program, nothing prevented him from doing so.

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The July 27, 2010 Drug Test

53. On July 26, 2010, Ms. LeTarte on behalf of the Board directed Dr. Gloskowski to submit an observed urine specimen. Dr. Gloskowski complied with the Board's order.

54. On July 30, 2010, Southwest reported to Board staff that Dr. Gloskowski's specimen tested positive for amphetamines and methamphetamine. Although Southwest's report showed the cutoff for a positive result, the report did not quantify the positive result. Southwest also reported that the specimen was "dilute" with a Creatinine of 13.3 mg/dL and a specific gravity of 1.002.

55. The Vyvanse prescription explained the amphetamine.

56. Dr. Carmack testified that the results of a dilute specimen could be multiplied by two or three to get a more accurate result without producing a false positive.

57. Dr. Carmack testified that methamphetamine has a stereo isomer and that an isomer test can be done on request. The isomer "D" marks the biologically active ingredient in the street drug methamphetamine that is not normally prescribed in this country. The isomer "L" marks the ingredient in Vicks inhalers and other decongestants that are not active except at very high dosages.

58. An isomer test of Dr. Gloskowski's July 27, 2010 urine specimen resulted in a greater than 90% concentration of the "D" isomer and a less than 10% concentration of the "L" isomer. Dr. Carmack testified that he had no doubt whatsoever that Dr. Gloskowski's July 27, 2010 specimen tested positive for methamphetamine.

59. Dr. Gloskowski testified that his 100 mg. dosage of Vyvanse is "50% more than the maximum that the FDA recommends." Dr. Gloskowski testified that he was taking Vyvanse and Claritin-D on July 27, 2010. Dr. Gloskowski called the "D" and "L" isomers "enantiomers," and testified that no studies had been performed on the effect of a combination of Vyvanse and an over-the-counter pseudo-ephedrine such as Claritin-D. Dr. Gloskowski testified that the body breaks down amphetamines through an "enzymatic pathway," that the Southwest test results showed a "low level of methamphetamine" compared to the level of amphetamine, and that methamphetamine use would have produced an opposite result.

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60. At the Board's July 30, 2010 meeting, it voted to summarily suspend Dr. Gloskowski's license to practice osteopathic medicine in the State of Arizona.

61. Ms. Meyers testified that the Board's order of summary suspension did not modify the terms of Dr. Gloskowski's probation under the Consent Agreement. Nonetheless, after the Board suspended his license, Dr. Gloskowski stopped calling the automated telephone message system and providing specimens on the days that he was selected.

62. Dr. Gloskowski testified that no one told him that he was required to continue complying with the Consent Agreement. Dr. Gloskowski testified that Kearney Clinic stopped paying his severance pay after his license was suspended, drug tests cost $65.00 each, and he could not afford to pay for further drug tests.

63. Dr. Gloskowski submitted the results of tests performed by Medtox Laboratories, Inc. in St. Paul, Minnesota ("Medtox") of urine and blood specimens that he purportedly provided on July 29, 2010. The documents show that the results were reported on August 9, 2010.

64. Dr. Gloskowski testified that he provided an observed urine specimen. However, the chain-of-custody form for the Medtox urine specimen was blank.

65. The Medtox results for Dr. Gloskowski's urine specimen were positive for amphetamine, negative for a number of other substances, but showed no result for methamphetamine. Dr. Gloskowski testified that Medtox may not have reported the results of all substances for which it tested that were negative.

66. The Medtox results for Dr. Gloskowski's blood specimen were negative for all substances, including amphetamine and methamphetamine.

67. Dr. Gloskowski admitted that because substances metabolize at different rates, negative results for urine specimens provided on a Thursday did not establish that positive results for specimens provided on the preceding Monday were false.

The November 23, 2010 Drug Test

68. Dr. Gloskowski testified that he did not appear at the November 22, 2010 further hearing because he had been up until 4:00 a.m. that morning, worrying about his children and his child visitation.

69. After Dr. Gloskowski failed to appear for the November 22, 2010 further hearing, Ms. LeTarte issued an order on behalf of the Board requiring him to immediately provide an observed urine specimen.

70. Dr. Gloskowski contacted Board staff and explained that he could not immediately provide a specimen because he did not have any change-of-custody forms. On November 23, 2010, at approximately 10:00 a.m., Dr. Gloskowski appeared at the Board's office and obtained a chain-of-custody form.

71. Later on November 23, 2010, Southwest personnel contacted Board staff and stated that Dr. Gloskowski had provided a specimen, but that the specimen was discarded because it was not observed. Southwest personnel further informed Board staff that at approximately 4:00 p.m., Dr. Gloskowski left the laboratory without providing a second specimen, and Southwest refunded the testing fee to him. Dr. Gloskowski never submitted an observed urine specimen to comply with the Board's November 22, 2010 order.

72. Dr. Gloskowski testified that when he submitted the urine specimen on November 23, 2010, the door was "wide open" and he was having a conversation with the female technician. After he provided the specimen, the technician told him that because a female was not allowed to observe a specimen provided by a male subject, he would have to provide a second specimen. Dr. Gloskowski testified that although he stayed at the laboratory drinking fluids for 3½ hours, he was unable to provide a second specimen. Dr. Gloskowski testified that he finally had to leave the laboratory because he was due to pick up his five-year-old son for visitation.

CONCLUSIONS OF LAW

1. This matter lies within the Board's jurisdiction.[1]

2. The Board bears the burden of proof and must establish cause to discipline Dr. Gloskowski's license by a preponderance of the evidence.[2] Dr. Gloskowski bears the burden to establish affirmative defenses by the same evidentiary standard.[3]

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[1] *See* A.R.S. §§ 32-1803(A)(1) and (13); 32-1855.
[2] *See* A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).
[3] *See* A.A.C. R2-19-119(B)(2).

3. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."[4] A preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."[5]

4. The Board established that the only observed urine specimen that Dr. Gloskowski ever submitted, on June 27, 2010, was positive for methamphetamine, his admitted drug of choice. Dr. Gloskowski chose not to cross-examine Dr. Carmack and presented no credible evidence to counter Dr. Carmack's testimony that Southwest's reported test results for the specimen were reliable.

5. The Board also established that Dr. Gloskowski repeatedly failed to comply with the terms of the Consent Agreement that required him to submit to drug tests, both random and at the Board's request. Dr. Gloskowski's various excuses and explanations for his violations of the Consent Agreement were not credible.

6. Therefore, the Board established that Dr. Gloskowski relapsed to substance abuse and violated the Consent Agreement. These acts constitute unprofessional conduct as defined by A.R.S. § 32-1854(25), (38), and (39).[6]

7. The Arizona legislature created the Board "to promote the safe and professional practice of osteopathy in this state."[7] Because Dr. Gloskowski has not accepted responsibility for his repeated failures to comply with the Consent Agreement and his relapse, the Board has

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[4] Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).
[5] BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).
[6] These statutory subsections define "unprofessional conduct" in relevant part as follows:

> 25. Violating a formal order, probation or a stipulation issued by the board under this chapter.
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> . . . .
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> 38. Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so.
> 39. Any conduct or practice that impairs the licensee's ability to safely and skillfully practice medicine or that may reasonably be expected to do so.

established that at this time, protection of the public requires revocation of Dr. Gloskowski's license under A.R.S. § 32-1855(I).[8]

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED:

1. The August 3, 2010 Order summarily suspending License No. 4405, previously issued to Dr. Gloskowski is affirmed.

2. License No. 4405, previously issued to Aaron Gloskowski, D.O. is revoked.

3. Dr. Gloskowski is assessed the costs of formal hearing. Those costs shall be paid on or about thirty-five (35) days from the date the Board issues an invoice for those costs, unless that deadline is extended by the Board or Executive Director

NOTICE OF RIGHT TO REQUEST REVIEW OR REHEARING

Any party may request a rehearing or review of this matter pursuant to A.R.S. § 41-1092.09. The motion for rehearing or review must be filed with the Arizona Board of Osteopathic Examiners within thirty (30) days. If a party files a motion for review or rehearing, that motion must be based on at least one of the eight grounds for review or rehearing that are allowed under A.A.C. R4-22-106(D). Failure to file a motion for rehearing or review within 30 days has the effect of prohibiting judicial review of the Board's decision. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a motion for

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[7] Laws 2002, Ch. 15, § 3.

[8] This statute provides as follows:

> A physician who, after an investigative or administrative hearing, is found to be guilty of unprofessional conduct or is found to be mentally or physically unable safely to engage in the practice of osteopathic medicine is subject to any combination of censure, probation, suspension of license, revocation of license, an order to return patient fees, imposition of hearing costs, imposition of a civil penalty of not to exceed five hundred dollars for each violation for a period of time, or permanently, and under conditions the board deems appropriate for the protection of the public health and safety and just in the circumstances. The board may charge the costs of an investigative or administrative hearing to the licensee if pursuant to that hearing the board determines that the licensee violated this chapter or board rules.

rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

ISSUED THIS 22nd DAY OF March, 2011.

STATE OF ARIZONA
BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY

By: Elaine LeTarte
Elaine LeTarte, Executive Director

Original filed this 22nd day of March, 2011 with the:

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In Medicine and Surgery
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Copy of the foregoing sent via certified mail,
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BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS

IN MEDICINE AND SURGERY

IN THE MATTER OF: **AARON GLOSKOWSKI, D.O.** Holder of License No. **4405** For the practice of osteopathic medicine in the State of Arizona	**Case No.: DO-10-0132** **INTERIM FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR SUMMARY SUSPENSION OF LICENSE**

INTRODUCTION

The above-captioned matter came before the Arizona Board of Osteopathic Examiners in Medicine & Surgery ("Board") for review on July 31, 2010. After reviewing relevant information and deliberating, the Board considered proceedings for a summary suspension action against the license of Aaron Gloskowski, D.O. ("Respondent"). Having considered the information in the matter and being fully advised, the Board enters the following Interim Findings of Fact, Conclusions of Law and Order for Summary Suspension of License No. 4405, pending formal hearing or other board action. A.R.S. § 32-1855(C).

The Respondent appeared before the Board on July 31, 2010 and was not represented by legal counsel.

JURISDICTIONAL STATEMENT

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

2. Respondent holds license No. 4405 issued by the Board to practice as an osteopathic physician.

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INTERIM FINDINGS OF FACT

1. On June 29, 2009, Respondent entered into a Consent Agreement and Order for Probation ("Order") with the Board for monitoring his recovery from substance abuse.

2. As part of that Order, Respondent agreed to take only medication prescribed to him by approved physicians.

3. As part of that Order, Respondent agreed to submit to biological fluid collection for testing as directed by Board staff.

4. As part of that Order, Respondent agreed that a positive finding of a drug or medication not prescribed in accordance with the Order shall be considered proof of relapse and that his license shall be summarily suspended pending a formal administrative hearing.

5. On June 9, 2010, Respondent submitted a sample of biological fluid for testing.

6. On June 10, 2010, Board staff was notified by the testing laboratory that the sample was invalid because the creatinine level was 1.4 mg/dL (cut off is 20); and the specific gravity was 1.0019 (cut off is 1.003). The testing laboratory informed Board staff that it suspected that the sample was not human urine.

7. On June 10, 2010, Board staff spoke with Respondent and told him that, because of the allegations made by the testing laboratory on June 10, 2010, he was to submit to an observed urine test and a hair test the next day, June 11, 2010. Board staff later left a phone message that the he was to write "observed" on the testing order, to ensure the laboratory staff did so.

8. On June 10, 2010, Respondent notified Board staff he would be out of the country June 13 through June 17, 2010, and therefore not eligible for testing.

9. On June 11, 2010, Respondent submitted to the biological fluid testing.

10. On June 11, 2010, the laboratory called Board staff to say that the hair test could not be done because Respondent had no head or body hair sufficiently long to test.

11. On June 14, 2010, Board staff was notified that the results of the biological fluid testing were negative for all medications, including amphetamines, despite Respondent having

reported being prescribed and taking Vyvanse in May and June, 2010. A valid sample had been obtained, however, the sample collected had not been observed. Respondent had written "monitored" instead of "observed" on the chain of custody form.

12. On June 16, 2010, Respondent was notified by letter that all future biological fluid samples must be observed.

13. On July 2, 2010, Respondent notified Board staff he would be out of the state between July 4 and July 12, 2010, and therefore was not eligible for testing.

14. On the morning of July 27, 2010, at Respondent's request, he met with the Executive Director and Deputy Director of the Board to discuss certain matters pertaining to his health, his practice, and his compliance with the Order.

15. At that meeting, Respondent confirmed that he left his previous place of employment in late June or early July and was not currently employed as a physician.

16. Respondent was directly to submit to another urine test that day, July 27, 2010, and to write "observed" on the chain of custody form. Respondent agreed to do so, and left the Board's office before 11:00 a.m.

17. Respondent submitted to the observed sample at 9:40 p.m. on July 27, 2010.

18. On July 28, 2010, the testing laboratory informed Board staff that Respondent tested positive for amphetamines (500 ng/mL) and methamphetamine (500 ng/mL). The amphetamines are explained by the prescription for Vyvanse 70 mg. The laboratory also reported that the sample was "dilute" with a Creatinine of 13.3 mg/dL (cut off is 20) and a specific gravity of 1.002 (cut off is 1.003).

INTERIM CONCLUSIONS OF LAW

1. Pursuant to A.R.S. § 32-1800, et seq. the Board has subject matter and personal jurisdiction in this matter.

2. The conduct and circumstances described in paragraphs 1 through 19 above, if proven true, constitute unprofessional conduct as defined in the following paragraphs of A.R.S. § 32-1854:

(6) Engaging in the practice of medicine in a manner that harms or may harm a patient or that the Board determines falls below the community standard.
(25) Violating a formal order, probation or a stipulation issued by the board under this chapter
(38) Any conduct or practice that endangers a patient's or the public's health or may reasonably be expected to do so.
(39) Any conduct or practice that impairs the licensee's ability to safely and skillfully practice medicine or that may reasonably expected to do so.

FINDING OF EMERGENCY

The public health, safety or welfare imperatively required emergency action, pursuant to A.R.S. § 32-1855(C), when the Board summarily suspended Respondent's license to practice osteopathic medicine in the State of Arizona.

ORDER

Pursuant to the authority vested in the Board, and based upon the Interim Findings of Fact and Interim Conclusions of Law, **IT IS HEREBY ORDERED THAT**:

1. Pursuant to A.R.S. §§ 32-1855(C) and 41-1064(C), License No. 4405 held by AARON GLOSKOWSKI, D.O. to practice osteopathic medicine is summarily suspended in the State of Arizona effective on the date of this order, pending further disciplinary proceedings or until further Order of the Board.

2. The Interim Findings of Fact and Conclusions of Law constitute written notice to Respondent of the charges of unprofessional conduct made by the Board against him. Respondent is entitled to a formal hearing to defend these charges within thirty (30) days after issuance of the Order.

3. The Board's Executive Director is instructed to refer this matter to the Office of Administrative Hearings for scheduling of an administrative hearing to be commenced no later than thirty (30) days from the date of the issuance of this order, unless stipulated and agreed otherwise by Respondent.

4. Service of this Order is effective upon either personal delivery or the date of mailing, by U.S. certified mail, addressed to Respondent's last known address of record with the Board. *See* A.R.S. § 32-1855(F).

ISSUED THIS 2nd DAY OF AUGUST, 2010.
STATE OF ARIZONA
BOARD OF OSTEOPATHIC EXAMINERS
IN MEDICINE AND SURGERY

By: _____
Elaine LeTarte, Executive Director

Original "Summary Suspension of License & Hearing Notice" filed this 3rd day of August, 2010 with the:

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

Copy of the foregoing "Summary Suspension of License & Hearing Notice" sent via email and certified, return receipt requested this 3rd day of August, 2010 to:

Aaron Gloskowski, D.O.
Address of Record

Copies of the foregoing "Summary Suspension of License & Hearing Notice" sent via regular mail this 3rd day of August, 2010 to:

Camila Alarcon, AAG
Office of the Attorney General CIV/LES
1275 West Washington
Phoenix AZ 85007 _____