BEFORE THE ARIZONA MEDICAL BOARD

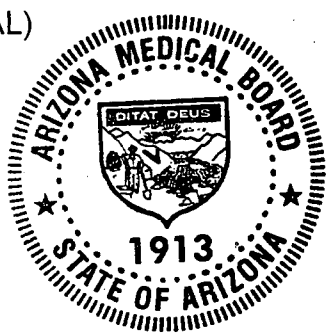
In the Matter of, **ALLAN B. AVEN, M.D.** Holder of License No. **40302** for the Practice of Allopathic Medicine in the State of Arizona, Respondent.	Case No: 11A-40302-MDX **NOTICE OF ERRATA** (Assigned to Administrative Law Judge Diane Mihalsky)

At its meeting on August 10, 2011, the Board approved the State's Findings of Fact, Conclusions of Law and Order revoking the license of Respondent. The document inaccurately reflected that Respondent and his legal counsel, Tom Slutes, appeared before the Board at that meeting. The Board issues this Notice of Errata to strike the portion of the introductory paragraph that states that "Allan B. Aven, M.D., ("Respondent") appeared before the Board with legal Counsel Tom Slutes; . . ."

DATED AND EFFECTIVE this 29th day of AUGUST, 2011.

ARIZONA MEDICAL BOARD

(SEAL)



By _____
Lisa S. Wynn
Executive Director

ORIGINAL filed this 29th day of August, 2011 with:

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COPY of the foregoing mailed this 29th day of August, 2011 to:

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BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **ALLAN B. AVEN, M.D.,** Holder of License No. 40302 for the Practice of Allopathic Medicine In the State of Arizona.	Board Case No. MD-11A-40302-MDX **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** **(Revocation)**

On August 10, 2011, this matter came before the Arizona Medical Board ("Board") for consideration of the Administrative Law Judge (ALJ) Diane Mihalsky's proposed Findings of Fact, Conclusions of Law and Recommended Order. Allan B. Aven, M.D., ("Respondent") appeared before the Board with legal Counsel Tom Slutes; Assistant Attorney General Anne Froedge, represented the State. Christopher Munns with the Solicitor General's Section of the Attorney General's Office, was present and available to provide independent legal advice to the Board.

The Board, having considered the ALJ's decision and the entire record in this matter, hereby issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

BACKGROUND

1. The Arizona Medical Board ("the Board") is the duly constituted authority for licensing and regulating the practice of allopathic medicine in the State of Arizona.

2. Allan B. Aven, M.D. was previously licensed and practiced as an allopathic family physician in Arlington Heights, Illinois. At the time of the hearing in this matter, Dr. Aven was approximately 68 years old.

3. In July 2006, Dr. Aven entered into a Consent Order in Case No. 2004095981 with the Illinois Department of Financial and Professional Regulation, Division of Professional Regulation ("the Illinois Division of Professional Regulation"), admitting that he had engaged in an improper physical relationship with his former female patient, DH. Dr. Aven also admitted that while he was treating DH for depression and various physical

ailments, he was also treating DH's husband, HH,[1] for sexual performance issues.[2] Dr. Aven's improper physical relationship with DH occurred in the fall of 2004.

4. As a result of the Consent Order in Case No. 2004095981, the Illinois Division of Professional Regulation suspended Dr. Aven's Illinois license to practice allopathic medicine between August 1, 2006, and November 30, 2006, and placed the license on probation between December 1, 2006, and November 30, 2008. The Illinois Division of Professional Regulation also required Dr. Aven to complete a 3-day course on professional boundaries at Vanderbilt University.

5. After Dr. Aven successfully completed the terms of the Consent Order in Case No. 2004095981 and the Illinois Division of Professional Regulation removed all restrictions from his license in Illinois, Dr. Aven applied to the Board to be licensed as an allopathic physician in Arizona.

6. The Board opened an investigation into Dr. Aven's application for licensure and in light the Consent Order in Case No. 2004095981, required Dr. Aven to undergo an extensive Professional Enhancement Program ("PEP") psychosexual evaluation at Pine Grove Evaluation Center in Hattiesburg, Mississippi ("Pine Grove").

7. On May 1, 2009, the Pine Grove evaluators rendered a report. As part of the evaluation, Dr. Aven underwent a polygraph examination at Pine Grove,[3] and the polygrapher reported that he considered Dr. Aven's negative response to the following relevant question to be truthful:

> Besides [DH], have you had sexual contact with any patients?[4]

8. The Pine Grove evaluators' diagnostic impressions of Dr. Aven were "Occupational Problem (Professional Sexual Misconduct in 2004)" on Axis I, and

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[1] DH and her husband have the same initials. For clarity, DH's husband will be referred to as "HH" throughout this decision.
[2] *See* the Board's Ex. 7.
[3] The results of polygraph examinations generally are not admissible in Arizona. However, in this case, Dr. Aven's and the Board's attorneys stipulated to admit the polygraph results.
[4] Dr. Aven's Ex. 15 at 11.

"Personality Disorder [Not Otherwise Specified] with schizoid/avoidant and narcissistic traits (provisional)" on Axis II.[5]

9. Although the Pine Grove evaluators expressed reservations about Dr. Aven's respect for patient boundaries, based in large part on the polygraph results, they recommended licensure, in relevant part as follows:

> It is our opinion that Dr. Aven is not adequately treated, with respect to his professional sexual misconduct. . . . The evaluators were concerned that, as he discussed the 2004 boundary violations, he exhibited significant distortions in judgment and deficiencies in insight. For example, he described his participation in very passive terms ("she came on to me, and the next thing you know, we were having sex"). Although he did acknowledge making an error in judgment, he also put heavy emphasis on the woman's behavior – for instance, how she approached him, how she made repeated references to her sexual dissatisfaction, how she initiated the encounters, etc. If not outright blaming the woman, he was at least attempting to rationalize or excuse his behavior. A physician who had been adequately treated for professional sexual misconduct would not have presented his story in this way, but instead would have focused more on his own vulnerability factors, responsibility, and mistakes. . . .
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> A number of risk factors also remain unaddressed. Dr. Aven is a very isolated man. He says of himself, "I am a loner. I don't want to need anybody." This is a perpetuation of a very distant family of origin, carried through a dysfunctional and distant 40-year marriage. The dissatisfaction in his relationship was part of why he acted out in 2004, and his relationships currently are non-existent and non-intimate. He remains at risk because of his isolation. . . . There is a longstanding and pervasive pattern of social detachment, isolation, and intimacy deficit in this man's life. This places him at risk of future acting out, if he does not receive adequate treatment.
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> We are also quite concerned about his negative attitude toward monitoring and treatment. We understand that Dr. Aven has suffered significant professional consequences because of his boundary violations. However, he expressed complete

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[5] Dr. Aven's Ex. 15 at 17.

> unwillingness to accept any form of treatment or monitoring. "I don't want anyone looking over my shoulder," he said, adding, "I don't believe in therapy." His resistance to accountability is further evidence of a need for monitoring, and a further indication that he is not adequately treated.
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> On the positive side, it should be noted that Dr. Aven did pass his polygraph. It does not appear that he has been sexual with any other patients, aside from the incident in 2004. Nevertheless, we are sufficiently concerned about his presentation to recommend a period of monitoring and specialized psychotherapy.[6]

10. The Board also obtained Dr. Aven's history of malpractice litigation during the past ten years. The history showed that on May 2, 2007, Dr. Aven's malpractice insurer paid $300,000.00 to settle a civil lawsuit based on the death by suicide of a female patient whom he was treating for depression.[7] According to the report, the specific complaint allegation was that Dr. Aven had failed to monitor the patient. Because the Board's investigation did not uncover any other malpractice claims against Dr. Aven within the last ten years and because the May 2007 settlement did not appear to involve misconduct similar to the sexual misconduct that Dr. Aven acknowledged in the Consent Order in Case No. 2004095981, at the time, the Board did not investigate further the May 2007 malpractice settlement.

11. DH filed the complaint to the Illinois Division of Professional Regulation for the affair that Dr. Aven acknowledged, resulting in the discipline imposed in Case No. 2004095981. DH and her husband also filed a civil lawsuit against Dr. Aven for malpractice. On July 27, 2009, Dr. Aven's malpractice insurer paid $197,500.00 to settle DH and HH's lawsuit.[8] Because the settlement occurred after the Board concluded its investigation into Dr. Aven's license application, the Board did not consider it in its initial investigation.

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[6] Dr. Aven's Ex. 15 at 15-16.
[7] See the Board's Ex. 4.
[8] *See* the Board's Ex. 4.

12. In 2009, the Board issued License No. 40302 to Dr. Aven. The license was unrestricted.

13. On or about November 17, 2010, the Board received an anonymous e-mail that referred to a news article that had appeared in the *Chicago Tribune* on November 13, 2010, about Dr. Aven entitled, "Doctor accused of preying on patients."[9] In addition to describing DH's complaint to the Illinois Division of Professional Regulation, the *Chicago Tribune* reported that in 2001, Dr. Aven's patient, DAB, had committed suicide outside Dr. Aven's office, and that Dr. Aven was treating her for depression while at the same time he was engaged in a sexual relationship with her. The *Chicago Tribune* also reported that the May 2007 malpractice settlement was with DAB's husband, KB.

14. The Board had considered Dr. Aven's affair with DH to have been an isolated lapse in judgment when it issued his license. Because the facts that the *Chicago Tribune* article alleged regarding DAB's case were similar to the facts that Dr. Aven acknowledged in the Consent Order resolving DH's complaint to the Illinois Division of Professional Responsibility, the Board opened a complaint against Dr. Aven and assigned it to its employee, Marlene Young, for investigation.

15. Ms. Young obtained deposition transcripts from DH and HH's lawsuit against Dr. Aven, and depositions, trial testimony, and other evidence from KB's lawsuit against Dr. Aven, including the deposition transcript of DAB's treating psychologist, Harvey M. Wolf, Psy.D., and interviewed Dr. Aven and DH. On March 1, 2011, Ms. Young submitted an investigative report to the Board in support of a psychosexual reevaluation of Dr. Aven.[10]

16. On March 4, 2011, the Board issued an Interim Order that required Dr. Aven to undergo another psychosexual evaluation at the Pine Grove or the Meadows evaluation facilities.[11]

17. Between April 18 and 22, 2011, Dr. Aven underwent a psychosexual evaluation at the Meadows facility located in Wickenburg, Arizona.

18. The Meadows psychosexual evaluation included a polygraph. The polygrapher asked Dr. Aven the following three relevant questions:

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[9] *See* the Board's Ex. 1 and 2.
[10] *See* the Board's Ex. 14.

1) Have you ever had intercourse with [DAB]?

2) Have you ever engaged in sexual intercourse with [DAB]?

3) Have you ever touched [DAB] for your own sexual gratification?

The polygrapher described the test results of Dr. Aven's negative responses to the three relevant questions as "deception indicated" and opined that "the examinee was not truthful in regard to the above listed relevant questions."[12]

19. The Meadows' psychosexual evaluation of Dr. Aven included a Psychiatric & Addiction Medicine Assessment by psychiatrist Stephen S. Brockway, M.D. Dr. Brockway concluded his report with the following formulation and assessment:[13]

> Formulation: It is my opinion that Dr. Aven is a serious sexual predator and sex offender. There is credible evidence that he groomed and then sexually abused patient [DH] for a period of approximately three months from September to October 2004. Her phone call with the Arizona Medical Board investigative staff details that affair. It is my opinion that he also had a two and a half year period of sexually abusing the now deceased patient [DAB], and that is well-detailed in the notes of her psychologist, Harvey Wolf, Psy.D.
>
> Of note are the similarities in the abuse patterns in which, I believe, he spent some time grooming these two vulnerable women who were both depressed. He then medicated them heavily and probably altered their thinking patterns with medications, treated the husbands in both cases and was aware of their sexual impotence or lack of sexual activity. He met the women in the early morning at his office prior to his seeing patients around 6:00 to 6:30 a.m. and both women said that they told their husbands that they were going to the gym which may be an idea that he implanted. He was quite controlling in his comments to the women, and very derogatory toward therapists who were seeing [DAB] and finally found ways to end each relationship that were of additional harm to each patient in that they felt rejected. The death of patient

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[11] *See* the Board's Ex. 15.
[12] The Board's Ex. 16 at 14.
[13] The Board's Ex. 16 at 8-9.

[DAB] on 8/9/01 seems directly connected to rejection, documented in Dr. Wolf's therapy note of 8/8/01,[14] by Dr. Aven the previous day.

Dr. Aven is probably not rehabilitatable. The evidence for that would be that he has gone through two lengthy malpractice cases, one for each patient, and failed to be honest about the extent and depth of the relationships. He also was quite belittling and derogatory toward each patient in the way he described them. He failed to get out of a sort of victim stance claiming that [DH] seduced him. He fails to make any comments about the grooming process that each woman asserts he engaged in.

It appears that he has very strong antisocial, offending behavior confined to this one single sexual area which has not carried over to illegal activities in other areas. It is my opinion that he has little or no conscience and has not shown remorse about the [DH] case or the [DAB] case. He has chosen to completely deny sexual involvement in the [DAB] case despite Dr. Wolf's very extensive notes over a period of a year and a half which are in the possession of the Arizona Medical Board.

In summary, I do not think that Dr. Aven should have an Arizona Medical License nor should he have a medical license in any state in the United States. He is a severe and dangerous perpetrator towards women who has used his medical license in practice to prey on at least two women and I suspect on many more.

Assessment
Axis I - No Diagnosis
Axis II - Personality Disorder, Not Otherwise Specified with Antisocial and Sexual Offending Behavior: 301.90.
Axis III - Per medical.
Axis IV - Occupational Problems.
Axis V - Admission Global Assessment of Functioning: 80.

(Footnote added.)

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[14] These dates are erroneous. DAB's last counseling session with Dr. Wolf was on August 8, 2001, but her last communication with him was on August 14, 2001, when she called him after an office visit to Dr. Aven.

20. On April 26, 2011, after the Board received the Meadows' report of the psychosexual evaluation of Dr. Aven, the Board issued an Interim Findings of Fact, Conclusions of Law and Order for Summary Restriction of License ("Interim Order for Summary Restriction"), restricting Dr. Aven from seeing, examining, or treating female patients.[15]

21. The Board 's Interim Order for Summary Restriction instructed its Executive Director to refer the matter to the Office of Administrative Hearings, an independent agency, for an evidentiary hearing.

22. On May 18, 2011, the Board issued a Complaint and Notice of Hearing, charging Dr. Aven with having committed unprofessional conduct as defined by A.R.S. § 32-1401(27)(z), and alleging that Dr. Aven's unprofessional conduct indicated that he was mentally or physically unable to safely engage in the practice of medicine pursuant to A.R.S. § 32-1451(M).

23. A hearing was held on June 22, 2011.

24. The Board submitted eighteen exhibits and presented the testimony of four witnesses: (1) Ms. Young, the Board's investigator; (2) Dr. Wolf, DAB's former treating psychologist; (3) Dr. Brockway, the psychiatrist who evaluated Dr. Aven at the Meadows; and (4) DH, the former patient with whom Dr. Aven acknowledged having a sexual relationship.

25. Dr. Aven submitted twenty-one exhibits and presented the testimony of three witnesses: (1) Himself; (2) John McGettigan, M.D., who hired Dr. Aven to work at the Quality of Life Medical Center and Quality of Life Research Center in Tucson, Arizona; and (3) Bradley Johnson, M.D., a psychiatrist who performed a psychosexual evaluation on Dr. Aven on May 25, 2011.

ADDITIONAL HEARING EVIDENCE

DH

DAB died on August 15, 2001.

[15] *See* the Board's Ex. 17.

26. Dr. Aven was DH's family physician, and treated DH's grandparents, parents, and siblings. Dr. Aven treated DH for seventeen or eighteen years, from the time that she was thirteen or fourteen years old until November 2004, when she was approximately 35 or 36 years old.[16] After DH married HH in 1991, Dr. Aven started treating HH.

27. In 2001, DH and HH stopped being physically intimate and engaging in sexual intercourse.

28. In 2003 and 2004, DH experienced multiple health problems. She underwent two ear surgeries and during the second, the audio nerve was severed, resulting in DH becoming deaf in one ear. A mammogram detected a mass in her breast, and she underwent a biopsy. Her gynecologist detected precancerous polyps in her uterine wall, and she underwent surgery. One of her surgeries resulted in a bacterial infection, resulting in additional hospitalization. DH also experienced vertigo, and during a vertigo episode, caused a chain reaction multiple vehicle accident, resulting in an injury to her left breast. In May 2004, DH became disabled, and stopped working as a gate agent for American Airlines.

29. DH's health problems caused her to become depressed and exacerbated her marital problems with HH. DH testified that Dr. Aven started behaving "inappropriately" to her in early 2004 by complimenting her appearance and asking about personal matters. In July 2004, Dr. Aven started treating DH's depression by prescribing Zoloft.[17] In August 2004, Dr. Aven switched DH's prescription to Wellbutrin.[18]

30. DH took classes at a junior college during the summer of 2004 in an attempt to obtain employment that could accommodate her various health problems. By the fall of 2004, DH had lost substantial weight and was down to 89 pounds.

31. DH testified that in an office visit in mid-September 2004, Dr. Aven enquired about her libido, and she responded, "What difference does it make since I'm not having sex with my husband?" DH testified that Dr. Aven said she had her choice of candidates, d

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[16] DH testified that she was 42 years old at the hearing.
[17] *See* the Board's Ex. 19 at 50-51.
[18] *See id.* at 52.

either ". . . a 17 or 18-year-old from school" or have relations with "a kind, gentle 60-year-old."[19]

32. DH testified that she thought that Dr. Aven was "alluding to the fact that there was something physically wrong" with her because she was not having sex, but that she was not sure to whom Dr. Aven was referring. During the weekend following the office visit, she wrote a note to Dr. Aven and put it into the drop box at his office.[20]

33. DH testified that Dr. Aven's office staff called her on the following Monday morning and instructed her to call Dr. Aven. When she called Dr. Aven, he informed her that he was the kind, gentle 60-year old and that DH's consideration of a sexual relationship with him was a "dream come true."[21] DH testified that Dr. Aven asked her to come by his office after his last patient left.

34. DH testified that she drove by Dr. Aven's office and saw one car. She made "one final loop," waiting for the car to leave, and Dr. Aven "flagged her down." She and Dr. Aven went into the hallway of his office, where she stood against the back wall. Although DH expected conversation, Dr. Aven instead started kissing her and asked her, essentially, if she wanted to have sex. Dr. Aven slipped his hand down DH's jeans.[22] DH testified that she and Dr. Aven had sexual intercourse and other sexual contacts on that day.

35. Dr. Aven did not testify at hearing about his sexual relationship with DH. On April 12, 2007, Dr. Aven's deposition was taken in DH and HH's civil lawsuit. At that deposition, Dr. Aven testified that his sexual relationship with DH began when she came to his office early one morning and made "suggestive remarks" to him and he "got carried away."[23] Dr. Aven did not remember the specific content of DH's suggestive remarks.[24] The sexual encounter occurred in the hallway of Dr. Aven's office, and consisted of DH putting Dr. Aven's hand on her breast and possibly touching Dr. Aven "genitally," but Dr. Aven was "not sure exactly . . . what happened or what [DH] said."[25] Dr. Aven testified at

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[19] *See id.* at 56.
[20] *See id.* at 60.
[21] *See id.* at 64.
[22] *See id.* at 67-68.
[23] *See* the Board's Ex. 9 at 98.
[24] *See id.* at 99.
[25] *Id.* at 100.

his deposition that although he achieved orgasm during his first sexual encounter with DH, they did not have intercourse because DH "hadn't had intercourse in 10 or 12 years and her anatomy didn't allow it."[26]

36. DH testified at the hearing and at her deposition that soon after the encounter in Dr. Aven's hallway, he called her at home at 5:30 a.m. and suggested that they meet during the lunch break. DH told him that she could not talk because her husband was home, and Dr. Aven called her again at mid-morning and asked to meet her at the lunch break. When she asked if they were meeting for lunch, Dr. Aven said he wanted to meet her at the Red Roof Inn, a local motel. DH rented a room, and Dr. Aven met her at the motel. DH testified that she was sitting on the bed, fully clothed, expecting that they would have conversation, but when she turned around, Dr. Aven was naked and started kissing her. DH testified that she had intercourse with Dr. Aven at the Red Roof Inn, and that before Dr. Aven left, he counted out three twenty dollar bills to pay for the room.[27] DH testified that she was already depressed, and that Dr. Aven made her feel degraded.

37. Dr. Aven testified in his deposition that he only had two or three sexual encounters with DH, and that he ended the sexual relationship after a week or ten days.[28]

38. DH testified at the hearing and at her deposition that her sexual relationship with Dr. Aven continued through November 2004, that the two saw each other one to three times a week at Dr. Aven's office, but that not all the contacts involved intercourse. DH testified in her deposition that she had sexual intercourse with Dr. Aven more than five but less than ten times.

39. DH testified that Dr. Aven was married during the time of her sexual relationship with him, but that Dr. Aven had made a "financial arrangement" with his wife when she had caught him in an affair years earlier. DH testified that Dr. Aven required her to follow a "regimen" that included not using any scented products that his wife might detect.

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[26] *Id.* at 104.
[27] *See* the Board's Ex. 19 at 70-74.
[28] *See* the Board's Ex. 9 at 113-114.

40. DH testified that during the time that Dr. Aven was having a sexual relationship with her, he treated her husband for impotence. DH testified that it was difficult for HH to discuss sexual issues, but that he "opened up" to Dr. Aven and asked for Viagra.

41. Dr. Aven testified in his deposition that HH came to him for treatment for impotence on November 9, 2004, after Dr. Aven's affair with DH had ended, but that the visit was not noted in Dr. Aven's chart for HH.

42. DH testified that three weeks before Thanksgiving 2004, Dr. Aven prescribed Risperdal to her.

43. DH testified at the hearing and at her deposition that the affair ended when her husband overheard her talking on the telephone with Dr. Aven when she was not wearing her hearing aid. HH became "enraged" and begged DH not to meet Dr. Aven, but she went to meet him. DH testified that Dr. Aven became "enraged" when she told him that HH knew about their sexual relationship and that Dr. Aven then said that he could not see her anymore.[29]

44. DH testified at hearing and at her deposition that the day after Dr. Aven broke off their sexual relationship, she became combative and erratic and was thinking about taking all of her medications at once. The mental health therapist whom she had been seeing since she was determined to be disabled recommended that she check herself into a psychiatric inpatient facility. DH checked herself into Northwest Community Hospital on the Sunday before Thanksgiving in 2004.[30]

45. DH testified at her deposition that on the following Monday, Dr. Aven visited her on the psychiatric ward of Northwest Community Hospital and "whispered in her ear" that he was "firing himself" as her physician and that she should not mention their affair to anyone.[31] She did not tell anyone at the hospital about her sexual relationship with Dr. Aven. DH was discharged from the psychiatric ward.

DAB

46. Dr. Aven treated DAB, a young Hispanic woman, from April 1992, until she died in August 2001, when she was 31 years old. Dr. Aven also treated DAB's husband, KB,

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[29] *See* the Board's Ex. 19 at 87-92.
[30] *See id.* at 101.

who was considerably older than she was. In 1992, before Dr. Aven started treating DAB, she had been hospitalized for a suicide attempt.

47. Dr. Aven prescribed Zoloft and Wellbutrin to DAB to treat her depression. DAB had confided to Dr. Aven that she had been raped before her marriage and that her husband had a reduced sex drive. Dr. Aven also counseled DAB regarding her weight. According to Dr. Aven's notes, DAB was 5'1", weighed 123 pounds in 1992, weighed 154 pounds during the summer of 2004, and weighed 141 pounds at her last office visit with Dr. Aven on August 14, 2001.[32]

48. Dr. Wolfe initially saw DAB in 1995, when she was 25 years old, after her gynecologist referred her for a mental status evaluation because she desired to be sterilized. Dr. Wolf determined that DAB was mentally stable and able to give informed consent to the sterilization procedure.

49. Dr. Wolf started treating DAB on May 24, 1999, when she sought treatment for work stress and sexual dysfunction in her marriage. Dr. Wolf described DAB at hearing as very cautious, and testified that the lack of sex in her marriage made DAB feel like her husband had rejected her. Dr. Wolf testified that DAB was not delusional.

50. Dr. Wolf testified that about six months into counseling, DAB started confiding that she was engaged in a sexual affair with a medical doctor, but would not identify the doctor to avoid getting him into trouble.[33] Dr. Wolf testified that sometimes DAB told him that the relationship made her feel like a "real woman" and sometimes drove her crazy and made her feel horrible. Dr. Wolf knew that Dr. Aven at that time was prescribing Zoloft and Wellbutrin to DAB for her depression.

51. According to Dr. Aven's deposition testimony in KB's lawsuit, his note dated May 9, 2000, reflected that DAB confided that she did not have any sexual activity with KB for many years, except for "maybe about four times," and hinted that she was having a

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[31] *See id.* at 108.
[32] *See* the Board's Ex. 10 (Aven deposition) at 21, 30, 54.
[33] *See* the Board's Ex. 12 at 12 (12/14/99 note about DAB's "bad" and declining referral to psychiatrist because she got "everything" from Dr. Aven), 15 (3/21/00 note about relationship with MD), 17 (5/1/2000 note about DAB's evasiveness about medications, 5/13/00 note about doctor's derogatory remarks about minorities and anger at MD), 19 (6/10/00 note that MD asks DAB why she continues with Dr. Wolf since he is not helping her).

sexual relationship with her psychologist.[34] Dr. Aven testified that he used the term "special" relationship in his notes to protect DAB's privacy and to jog his memory.

52. Dr. Wolf denied having a sexual relationship with DAB. There is no other evidence that DAB ever told anyone else that she was having a sexual relationship with Dr. Wolf.

53. Dr. Wolf testified that DAB eventually confided that she was having a sexual relationship with Dr. Aven, as reflected in his notes.[35] Dr. Wolf testified that DAB felt bad about the relationship, feared that she would go to hell, and feared that KB would find out about the relationship and hurt Dr. Aven. When Dr. Wolf asked DAB why she kept going back, she said the relationship was addictive, "like a cat and mouse." Dr. Wolf testified that during two sessions, DAB received telephone calls from Dr. Aven.

54. Dr. Aven testified that he frequently returns patients' messages to their cellular phones.

55. Dr. Wolf's notes included a four-page e-mail dated June 17, 2000, that DAB said that she had sent to Dr. Aven, attempting to end her personal, professional, and physical relationship with him. The e-mail stated that "the inappropriate nature" of DAB and Dr. Aven's relationship had caused DAB a "great deal of pain," that she had shared the intimate details of her life with Dr. Aven, as her physician, and that she saw now that her trust was "naïve and misplaced." DAB told Dr. Aven that "[i]t is unfortunate that a doctor would use such private and guarded information to manipulate his patients into serving his own ends." DAB's note is articulate.

56. Dr. Aven denied having ever received such an e-mail from DAB. Dr. Aven told Dr. Brockway at the Meadows that he discharged DAB from his practice "for her attitude," and that DAB sent him an e-mail, asking to come back, and he saw her again.[36] Dr. Aven submitted an e-mail that DAB sent on or about August 22, 2000, stating as follows:

> I can't believe you would still take the time to help me after everything. I want you to know I have learned a valuable

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[34] *See* the Board's Ex. 10 at 40-41.
[35] *See* the Board's Ex. 12 at 28 (9/23/00 note), 31 (2/14/01 note).
[36] *See* the Board's Ex. 16 at 6.

> lesson. And if you'll have me back as a patient it would be an honor to have you back as my physician.[37]

57. Dr. Wolf testified that he saw no reason to disbelieve DAB's statements about her sexual relationship with Dr. Aven. Dr. Wolf knows he needs to be careful about such statements, because patients may retaliate against their doctors. But DAB did not reveal Dr. Aven's identity at first, but divulged details over time. Dr. Wolf testified that if a person is making up such a relationship, she "will go on and on with details" as "externalized hatred." Dr. Wolf testified that DAB did not express any hatred toward Dr. Aven, but focused on herself and her concern that KB would hurt Dr. Aven. Dr. Wolf testified that DAB maintained eye contact when she disclosed the details of her relationship with Dr. Aven.

58. Dr. Wolf testified that DAB was very vulnerable, although she could be very "blustery" and outspoken. It was not unusual for DAB to let him know her displeasure if he was late for appointments. Because of DAB's volatility, Dr. Wolf did not see her if no one else was in his office. But Dr. Wolf testified that when DAB discussed her feelings about KB, her parents, and religion, she was "like a soft little girl."

59. Dr. Wolf testified that in his opinion, Dr. Aven was a sexual predator because he chose to have a relationship with a patient who was not intact or mentally healthy.

60. Dr. Aven testified in his deposition in KB's lawsuit that his notes for DAB's last visit to his office on August 14, 2001, documented that she had a decreased appetite for three days, that she had increased marital and job stress for three or four days, and that she was "tearful, but not suicidal."[38] Dr. Aven testified that although DAB had lost weight, she was upset about a comment from a coworker regarding her weight.[39]

61. DAB's last counseling session with Dr. Wolf was on August 8, 2001. Dr. Wolf testified that his last contact with DAB was on August 14, 2001, at approximately 6:30 p.m., when she called him after her visit to Dr. Aven's office. Dr. Wolf testified that DAB was crying because Dr. Aven had told her their relationship was over because she was

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[37] Respondent's Ex. 8.
[38] *See* the Board's Ex. 10 at 54.
[39] *See id.* at 55-56.

overweight, and that he was in love with Michelle, a medical assistant in his office who was a former patient, and that Michelle had gotten into medical school.[40]

62. Dr. Wolf testified that DAB said she made a scene in Dr. Aven's office, but that when she left, his staff calmed her down and was nice to her. Dr. Wolf testified that DAB knew Michelle, did not like her, and considered her to be a rival. Dr. Wolf testified that he offered DAB a counseling session that evening, but she agreed to come for a 4:30 p.m. appointment the next day.

63. Dr. Aven acknowledged that he had a brief sexual relationship with Michelle and that Michelle was DAB's friend "for some reason."[41]

64. Dr. Aven testified at his deposition that he noticed DAB on the grass outside his office at 8:00 a.m. on August 15, 2001, and that after he was able to arouse her, she told him that she "had taken a whole bunch of pills," including Zoloft, Wellbutrin, and some Tylenol with codeine.[42] He later noticed DAB's van in the parking lot.[43]

65. Dr. Aven asked a member of his staff to call 911, and the ambulance transported DAB to the hospital. DAB later aspirated on her vomit and died.

66. Dr. Wolf testified that he learned of DAB's death from KB, who was sobbing when he called Dr. Wolf to explain the details of DAB's death. Dr. Wolf testified that he had never before lost a patient to suicide.

67. KB's lawsuit against Dr. Aven, the emergency room physician, and the hospital was filed on or about August 12, 2003, just within the two years after death allowed for medical malpractice actions in Illinois. The complaint in KB's lawsuit did not allege that Dr. Aven had an improper sexual relationship with DAB, but only that he had deviated from the standard of care by failing to recognize the risk that DAB would harm herself.[44]

68. Dr. Wolf testified in his deposition in KB's lawsuit that he waited three years to tell KB about DAB's disclosures about her sexual relationship with Dr. Aven.[45]

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[40] *See also* the Board's Ex. 12 at 33. Dr. Aven admitted in the Board's telephonic interview that Michelle was his medical assistant and had been his patient. *See* the Board's Ex. 13 at 24.
[41] *See* the Board's Ex. 13 at 11.
[42] *See* the Board's Ex. 10 at 77.
[43] *See* the Board's Ex. 10 at 74-76.
[44] *See* Respondent's Ex. 1 at 3.
[45] *See* the Board's Ex. 12 at 48.

69. After Dr. Wolf disclosed to KB that DAB had told him that she had a sexual relationship with Dr. Aven, Dr. Aven's experts on the standards of care in psychiatry and family practice testified that a physician's sexual relationship with a patient was independent of the medical standard of care,[46] and that if Dr. Aven was having a sexual relationship with DAB, it did not impact his medical judgment.

70. Dr. Aven has consistently denied ever having a sexual relationship with DAB. He told Board investigators on February 17, 2011, that DAB was "not a nice person," was "vile," and "used not-so-nice language." Dr. Aven said that "[l]ots of things in her life had sexual connotations" and that he believed DAB was jealous of Michelle.[47]

71. Dr. Aven told Board investigators, Dr. Brockway, and Dr. Johnson that DAB did not wear underwear and that on one occasion, he walked into the examination room and found DAB with her skirt over her head, masturbating.[48] Dr. Aven said that he "closed the door a little bit" and asked DAB to "stop doing that" and to wash her hands.[49] Dr. Aven acknowledged that his notes did not describe the incident, that after the incident, he continued treating DAB, and that he did not use a chaperone, although he kept the door open.[50] None of the exhibits submitted showed that Dr. Aven had described this incident at any time before the Board initiated this complaint.

72. Dr. Aven also told Board staff that he recognized DAB's van in the parking lot when he found her outside his office on August 15, 2001, because earlier he had seen her following him in her van.[51] Dr. Aven's interview is the first time he stated that DAB ever followed him.

Dr. Johnson's Psychosexual Evaluation of Dr. Aven and Drs. Johnson's and Brockway's Hearing Testimony

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[46] *See* Respondent's Ex 3 at 22; Respondent's Ex. 4 at 48.
[47] *See* the Board's Ex. 13 at 11-12.
[48] *See* the Board's Ex. 16 at 6; the Board's Ex. 13 at 14.
[49] *See id.*
[50] *See id.*
[51] *See id.* at 53.

73. During the course of the Board's investigation, Dr. Aven retained Dr. Johnson to perform a psychosexual evaluation and to consider the evidence against Dr. Aven of sexual misconduct. Dr. Johnson is a forensic psychiatrist who is the Chief of Psychiatry at the Arizona State Hospital, where he is in charge of treating sex offenders. Dr. Johnson also frequently performs evaluations for courts.

74. On May 25, 2011, Dr. Johnson performed a psychosexual evaluation of Dr. Aven. Dr. Johnson's report concluded with the following opinion and discussion:

> It is my opinion with reasonable medical certainty that Dr. Allan Aven does not suffer from any Axis I or Axis II psychiatric diagnoses as based on the diagnostic criteria from the Diagnostic and Statistical Manual-IV-Test Revision (DSM-IV-TR). There is no evidence that he suffers from a sexual paraphilia, or sexual disorder. Additionally, I am not convinced that he meets criteria for a personality disorder, and, in fact, am not convinced that he meets criteria for traits of any personality disorders.
>
> It was the purpose of this evaluation to asses [*sic*] Dr. Aven for psychiatric disorders, including psychosexual disorders, as well as to assess any potential risk that he may pose to the community at large, including his medical patients, in the future. It is not the purpose of this evaluation to determine guilt or innocence of allegations that have been brought against him by the means of a newspaper article published in the Chicago Tribune nor of evaluations or statements made by others. In other words, as a psychiatrist I cannot be the Trier of fact in regard to concluding whether Dr. Aven has committed specific acts or behaviors in the past, but am able to render an opinion in regard to diagnosis and risk.
>
> Dr. Aven fully admits to having engaged in an inappropriate sexual relationship or sexual misconduct with a prior patient in 2004. Additionally, he has admitted to engaging in extramarital affairs with two of his prior staff, both being medical assistants. One of the affairs occurred in the 1970s, and the other in the mid 2000s. Dr. Aven admitted that his choice to engage in extramarital affairs was a poor decision in each case, and fully admitted that his choice to engage in sexual misconduct and attempt to have sexual intercourse with [DH] on multiple occasions was wrong, damaging, and inappropriate without question. He appears to have fully admitted to the situation with [DH] and although uses rationalizations about his own

failing relationship with his wife as to why he allowed the situation to occur, now looks back on the situation with much regret and sorrow.

Dr. Aven has denied ongoing that he had a sexual relationship with another patient, however, as has been alleged. As is well understood, there have been more recent allegations that came forth that he had an ongoing sexual relationship with a prior patient who eventually committed suicide in 2001, although Dr. Aven has not been alleged of such in a criminal setting, nor has been found guilty of such in a criminal court. However, it is reasonable to understand that the Arizona Medical Board wished to investigate allegations further given the seriousness of such allegation toward a physician, and especially to help make a determination as to whether it is safe for Dr. Aven to continue to practice medicine in the future. Thus, further evaluation and investigations occurred.

Upon having the ability to review the prior psychosexual evaluations, other numerous collateral sources as outlined at the beginning of this report, and having interviewed and administered further psychosexual testing to Dr. Aven, I again conclude that Dr. Aven does not meet the criteria for any psychiatric including psychosexual disorders. This is not to state that there are not issues of concern, as Dr. Aven has had a history of poor boundaries with at least one patient. Additionally, it is my impression that he has demonstrated poor boundaries with two staff members. However, I am concerned that Dr. Aven has been listed as a "sexual predator," when such a term has legal implications which I do not believe applies in this case. It is an alarming term, in which I do not believe a mental health evaluator should be concluding in such a case. Rather, it is again not appropriate for a mental health evaluator to conclude guilt or innocence of specific acts, but to focus on positives and negatives of an individual, and also to look at issues of risk.

Dr. Aven was trained in medicine at a time when issues of boundaries with patients were not generally discussed, taught, nor emphasized as they are these days. In fact, as one looks back in medical education history, it is not uncommon that in decades past, physicians would sometimes have close relationships with their patients, including close social interaction, and even dating or marrying their patients. Although this evaluator does not condone such, the issues of

boundaries with patients have evolved over the last few decades to a point to where it is now clearly understood that there are control issues, inequalities, dependency problems, and other issues of concern that have led to a very different understanding of boundaries with a patient these days then [*sic*] was felt to be the case in years past. . . .

. . . .

There is also a concern that Dr. Aven has presented himself in a very positive light on psychological testing that has been administered in the past. One could initially interpret that he has presented himself better than he is in actuality because he was attempting to lie and be deceitful. However, when I talked to Dr. Aven about this issue, he admitted that he had seen those evaluations on him as being threatening and possibly even biased against him, and he was afraid that if he answered things in a manner that is less then [*sic*] presenting himself in a positive way, it would be used against him in a manner that would be very hurtful for the outcome of the evaluation and his future. . . .

Next, there has been some concern that Dr. Aven has not fully shown empathy toward what occurred with [DH] in the past, or possibly in other situations. He states quite matter of factly that he regrets what he did with [DH], as well as having other extramarital affairs, but I agree that he does not show much emotion at this point about his sexual misconduct in the past. However, having worked with numerous individuals, including actual sex offenders, in the past that have engaged in inappropriate sexual behaviors with other people, it is not uncommon that an individual may be quite careful as to what they admit and how much they admit as to how the situations made them feel emotionally, including expressing too much empathy, for fear that it would be tantamount to admitting guilt to something more than even occurred, and that additional negative outcome could occur. . . .

Dr. Aven presents in many positives about his background in addition to the concerns that have been discussed above. He seems to have fully taken responsibility for his sexual misconduct with [DH]. He has undergone at least some training at this point in his career regarding appropriate boundaries with patients. He is willing now at this point to have a chaperone in the room with him when he sees any patient, whether male or female, and reported to me that he is willing to

> engage in further psychotherapy, if recommended, although I admit that I believe he is not anxious to engage in further psychotherapy. It is my impression that he would benefit from continued training and therapy to even more fully understand the concept of inequality and control in a doctor/patient relationship, and to possible more fully understand how sexual misconduct with a patient can hurt them emotionally, and cause damage in multiple ways to the patient. . . .
>
> Finally, there is the issue of risk to the community, and the risk of engaging in future sexual misconduct. In the field of mental health, one does not have a crystal ball that can definitively predict whether an individual will or will not engage in sexual misconduct or even sex offenses in the future. However, in the field of sex offense treatment, there has been a great deal of research looking at reduction of risk of reoffense. Although there is not specific risk assessment tools that have generally been used for professional sexual misconduct only, the concepts that have been looked at as risk factors in sexual offenses in general are reasonable to address in the case of Dr. Aven. . . . Sex risk factors include whether an individual has committed prior sex offenses, whether they have engaged in non-sexual violent crimes, if their victims are unrelated to them or actual strangers, if any of their victims are males, if the individual who has committed a sex crime is under the age of 25, and whether they have had a sexual partner for at least two years during their life. Dr. Aven does not demonstrate risk factors according to the risks as above. . . .[52]

75. Dr. Johnson testified consistently with his report. Based on the low risk that Dr. Aven would commit a future sexual offense, Dr. Johnson recommended that the Board allow Dr. Aven to continue practicing, but to require a chaperone for both male and female patients and to require Dr. Aven to undergo additional counseling in the area of patient boundaries.

76. Dr. Aven told evaluators at Pine Grove in April 2009, that as a result of the Illinois Division of Professional Responsibility suspending his license after DH's complaint, he lost several large insurance contracts and was divorced from his wife of 40 years, his

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[52] Respondent's Ex. 20.

wife receiving most of the marital assets in the divorce. He wanted to relocate to Arizona for a "fresh start."[53]

77. Dr. Aven told Dr. Johnson in May 2011, that he moved to Arizona for the weather and to be free of the burden of running a private practice, that he has had four girlfriends since his divorce, and that he has been seeing his current girlfriend two or three times a week for five months.[54]

78. Dr. Brockway testified consistently with his report of his psychosexual evaluation of Dr. Aven at the Meadows in April 2011. Dr. Brockway did not find that Dr. Aven suffered from sexual addiction, but found that he had a personality disorder with antisocial and sexual predatory features. Dr. Brockway testified that he believed that Dr. Aven had a sexual relationship with DAB for 2½ years. Dr. Brockway testified that Dr. Aven's acknowledged sexual relationship with DH and the alleged sexual relationship with DAB showed a pattern of grooming and then taking advantage of depressed, vulnerable women with marital and sexual problems for whom he occupied a position of trust. Dr. Brockway testified that Dr. Aven showed a lack of concern for either patient's well-being, and that even after he acknowledged the affair with DH, he continued to minimize his behavior.

79. Dr. Brockway testified that he did not recommend that Dr. Aven receive treatment because he was "so well-defended" and so much "in the perpetrator's camp." Dr. Brockway testified that Dr. Aven was not safe to practice.

Other Evidence

80. Dr. Aven submitted more than 142 pages of letters and notes from former patients of both sexes, thanking him for his care and treatment. The articles dated from 1971, when Dr. Aven was a young naval officer practicing at a naval base at Meridian, Mississippi, to 2010, when many of his patients expressed their regret on his retirement. The letters praised Dr. Aven's diagnostic skills and his flexibility in being willing to treat patients at their homes and on weekends.[55]

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[53] *See* Respondent's Ex. 15 at 3.
[54] *See* Respondent's Ex. 20 at 2-3.
[55] *See* Respondent's Ex. 2.

81. Dr. McGettigan testified that he recruited Dr. Aven to work on the research side of the Quality of Life Medical Center and Quality of Life Research Center in Tucson between July and August, 2010. Dr. Aven was also developing a family practice devoted to the treatment of men, women, and children. Dr. McGettigan testified that before the Board restricted his license, Dr. Aven saw approximately four patients a day.

82. Dr. McGettigan testified that Dr. Aven disclosed the discipline against his Illinois license during the time that Dr. McGettigan was recruiting him. Dr. McGettigan testified that patients of both genders in Tucson had good experiences with "Dr. Al" and that Dr. Aven respected patient boundaries. Dr. McGettigan testified that Dr. Brockway was "stirring up issues" from Dr. Aven's past and found evidence of problems that no one else saw. Even after the Tucson papers reported the article from the *Chicago Tribune*, Dr. Aven's patients in Tucson remained loyal and expressed a desire to remain under his care.

83. Dr. Aven testified that on the day he took the polygraph examination at the Meadows, Dr. Brockway was "accusatory and berating." Afterwards, when he returned to his survivors' group, he could hear Dr. Brockway talking about him through the "paper-thin" walls. As a result, Dr. Aven testified that he was anxious when he underwent the polygraph examination at the Meadows.

84. Dr. Johnson testified that the relevant questions on the polygraph test at the Meadows were not good questions because they concerned guilt or innocence. Such questions may cause an anxious individual to have a false positive on a polygraph test.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to consider this complaint and to discipline Dr. Aven's license to practice allopathic medicine in Arizona.[56]

2. The Board bears the burden of proof and must establish cause to discipline Dr. Aven's license to practice allopathic medicine in Arizona by a preponderance of the evidence.[57]

3. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."[58] A preponderance of the evidence is "[t]he

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[56] See A.R.S. § 32-1451.

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."[59]

4. A patient's statements for purposes of medical diagnoses or treatment are excluded from the hearsay rule,[60] even if the declarant is available as a witness.[61] Even if DAB's statements to Dr. Wolf are hearsay, hearsay may be admitted in an administrative hearing[62] and may be relied upon if it is the kind of evidence upon which reasonable persons would rely in serious matters.[63]

5. In Arizona, because polygraph evidence is considered unreliable, such evidence generally is not admissible, absent a stipulation, even in an administrative hearing.[64] Although the parties stipulated to the admission of the results of Dr. Aven's polygraph examinations at Pine Grove and the Meadows, the Administrative Law Judge considers those results only in the context of the totality of the evidence in this case.

6. Dr. Wolf's testimony that DAB was not delusional and did not show any signs that she was retaliating against Dr. Aven was credible. Dr. Wolf's testimony that he had a well-founded belief that DAB was having a sexual relationship with Dr. Aven was credible.

7. Throughout discovery in KB's lawsuit after DAB's death, Dr. Aven did not express any sorrow, empathy, or regret over the tragic death of a young woman who had been his patient for nearly a decade. After the Board initiated the investigation into Dr.

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[57] *See* A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).
[58] Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).
[59] BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).
[60] *See* Ariz. R. Evid. 801(c) ("'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.").
[61] *See* Ariz. R. Evid. 803(4); *see also State v. Robinson,* 153 Ariz. 191, 204, 735 P.2d 801, 814 (1987) (The "indicia of reliability" of minor sexual abuse victim's statements to treating psychologist "can be inferred because the statements fall within Rule 803(4).").
[62] *See* A.R.S. § 41-1092.07(F)(1).
[63] *See Plowman v. Arizona State Liquor Board*, 152 Ariz. 331, 337, 732 P.2d 222, 228 (App. 1986) (citing *Begay v. Arizona Department of Economic Security*, 128 Ariz. 407, 626 P.2d 137 (App. 1981)).
[64] *See In re Swartz,* 141 Ariz. 266, 276, 686 P.2d 1236, 1246 (1984).

Aven's possible additional affair with another vulnerable patient, Dr. Aven disclosed two new incidents to discredit DAB, specifically, that he found her masturbating in his office and that she followed him in her car on at least one occasion. Dr. Aven did not note these bizarre events in his treatment notes or disclose them in his deposition during KB's lawsuit, and continued his treatment of DAB, without a chaperone. Dr. Aven acknowledged that he had engaged in a sexual relationship with Michelle, that DAB was jealous of Michelle, and that DAB was upset and tearful when she left his office on August 14, 2001. DAB told Dr. Wolf that Dr. Aven had rejected her in favor of Michelle. In light of all the evidence that was presented, Dr. Aven's denial that he had a sexual relationship with DAB was not credible.

8. Therefore, the Board established that Respondent committed multiple acts of unprofessional conduct as defined by A.R.S. § 32-1401(27)(z)[65] by conducting sexual relationships with DAB and DH while they were his patients. The Board also established that due to the repeated nature of the misconduct, the extreme vulnerability of DH and DAB, and Dr. Aven's minimization of his relationship with DH and refusal to admit his relationship with DAB, the Board established that Dr. Aven is mentally or physically unable to safely engage in the practice of medicine pursuant to A.R.S. § 32-1451(M).[66]

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[65] A.R.S. § 32-1401(27)(z) defines "unprofessional conduct" to include the following:

> Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:
> (i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.
> (ii) Making sexual advances, requesting sexual favors or engaging in any other verbal conduct or physical contact of a sexual nature.
> (iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

[66] A.R.S. § 32-1451 sets for bases for the Board to discipline a physician's license. A.R.S. § 32-1451(M) provides as follows:

> Any doctor of medicine who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable safely to engage in the practice of medicine or to be medically incompetent is subject to censure, probation as provided in this section, suspension of

9. The legislature created the Board to protect the public.[67] Given the egregious nature of Dr. Aven's repeated misconduct, protection of the public requires that the Board revoke Dr. Aven's license to practice allopathic medicine.

ORDER

Respondent's License No. 40302 shall be revoked on the effective date of the Order entered in this case.

Respondent shall be assessed the costs of the formal hearing, pursuant to A.R.S. § 32-1451(M). Payment of those costs shall be due no later than 60 days from the date of invoicing by the Board, unless the Board or its designee amends that deadline date.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. The petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

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> license or revocation of license or any combination of these, including a stay of action, and for a period of time or permanently and under conditions as the board deems appropriate for the protection of the public health and safety and just in the circumstance. . . .

[67] *See* Laws 1992, Ch. 316, § 10.

DATED this 11th day of August 2011.

THE ARIZONA MEDICAL BOARD

By _____
LISA WYNN
Executive Director

ORIGINAL of the foregoing filed this 11th day of August, 2011 with:

Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

COPY OF THE FOREGOING FILED this 11th day of August, 2011 with:

Cliff J. Vanell, Director
Office of Administrative Hearings
1400 W. Washington, Ste 101
Phoenix, AZ 85007

Executed copy of the foregoing mailed by U.S. Mail this 11th day of August, 2011 to:

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