BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF ARIZONA

In the Matter of: SOPHIA CUDAK, M.D. Holder of License No. 11222 For the Practice of Medicine In the State of Arizona.	))))))	Investigative Case No. 10639 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

INTRODUCTION

This matter was considered by the Board of Medical Examiners (hereafter, "Board") at its public meetings on August 6, 1998 and September 25, 1998. SOPHIA CUDAK, M.D. (hereafter "Respondent"), appeared on August 6, 1998 with legal counsel, Jeff Bouma, in order that the Board could conduct an informal interview, pursuant to the authority vested in the Board by A.R.S. §32-1451(G). After due consideration of the facts and law applicable to this matter, the Board voted to issue the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. The Board of Medical Examiners of the State of Arizona (hereafter "Board") is the duly constituted authority for the regulation and control of the practice of medicine in the State of Arizona pursuant to A.R.S. §32-1401, et seq.

2. Respondent is the holder of License No. 11222 for the practice of medicine in the State of Arizona.

3. The Board is in receipt of correspondence from Janet L. Mullins, M.D., FAAFP, and a licensee of this Board, wherein Dr. Mullins reports that Dr. Cudak suffers from a disabling physical condition which has caused her to be unable to fully perform her duties as an emergency room physician.

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4. The Board is in receipt of correspondence from Tim A. Johns, M.D., President, Regional Emergency Specialists with Chandler Regional Hospital, wherein Dr. Johns reports that Dr. Cudak suffers from "extreme physical hardships" that have precluded her from being able to attend to patients since December, 1996. Nevertheless, Dr. Johns reports that Dr. Cudak has been able to prepare peer review reports; and, Dr. Johns expresses the opinion that the nature of Dr. Cudak's illness does not effect her cognitive functioning.

5. Through correspondence directed to the Board by Respondent's counsel, Jeff Bouma, and dated July 28, 1998, Respondent acknowledges that ". . . she is not physically capable of treating patients." However, Respondent asserts that she is capable of reviewing medical records and that she currently performs such medical record review on behalf of the emergency room practice group at Chandler Regional Medical Center. Through her attorney, Dr. Cudak reports that she has been receiving compensation for the aforementioned medical records review services but is required to maintain an active license in order to continue to receive compensation. Dr. Cudak requested that the Board accept her offer of a voluntary restriction on her active license to practice so that she might be able to continue practicing for the limited purpose of reviewing records and providing commentary as to the care and treatment reported in the patient records and to act as consultant to others regarding medical issues. Dr. Cudak offers not to treat patients, prescribe medication or engage in other activities which constitute the practice of medicine, either within the State of Arizona, the United States or any other country.

6. The Board is also in receipt of investigative reports and correspondence from the Drug Enforcement Administration ("DEA"), Phoenix, Field Division, 3010 North 2nd Street, Suite 301,. Phoenix, Arizona 85012 which reports the following information concerning Dr. Cudak.

A. DEA received information establishing that Dr. Cudak purchased large quantities of controlled substances. The agency verified this data and determined that Dr. Cudak had in fact received controlled substances from various distributors. The controlled substances were sent to Poland, specifically the Red Cross, without filing the proper documents to effectuate the export.

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B. Dr. Cudak did not provide accurate and complete records to conduct the aforementioned activity; and, she did not possess a DEA exporter registration nor did she maintain complete and accurate records to verify that the controlled substances were sent to Poland. The aforementioned conduct constitutes a violation of 21 U.S.C. §953(a)(c)(e) and 21 U.S.C. §827(a)(b).

C. DEA informed Dr. Cudak that, pursuant to 21 U.S.C. §824, her DEA certification of registration was subject to revocation for the alleged misconduct. However, in lieu of initiating formal proceedings for revocations of Dr. Cudak's DEA certificate of registration, she was offered the opportunity to voluntarily surrender her DEA certificate of registration. Dr. Cudak subsequently signed and returned a DEA form, for voluntary surrender of controlled substances privileges, to the agency.

D. Dr. Cudak's decision to voluntarily surrender her DEA certificate of Registration was substantially influenced by her disability which prevents her from treating patient. As Dr. Cudak no longer is capable of treating patients, she was no longer prescribing medications to patients. Therefore, she concluded their was no need to maintain her certificate of registration.

7. During the course of the Board's informal interview proceeding with Dr. Cudak on August 6, 1998, she acknowledged those facts alleged by DEA concerning and relating to her obtaining large quantities of controlled substances and sending those controlled substances to Poland. The information obtained by the Board's investigative staff and reported to the Board by Dr. Cudak indicates that the controlled substances sent to Poland did not consist of narcotics or other Schedule II or III substances. Dr. Cudak did acknowledge the failure to maintain adequate records and to comply with the appropriate registration requirements to send controlled substances out of the country.

8. Neither the DEA nor this Boards investigation or interviews have turned up any evidence that the substances received by Dr. Cudak and forwarded to physicians and the Red Cross in Poland were used inappropriately. All materials received by Dr. Cudak were part of a larger, sustained effort by Dr. Cudak and her husband to provide charitable medical assistance to the people of Poland.

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CONCLUSIONS OF LAW

1. The Board of Medical Examiners of the State of Arizona possesses jurisdiction over the subject matter hereof and over SOPHIA CUDAK, M.D.

2. The Board has received substantial evidence supporting the Findings of Fact described above and said facts constitute unprofessional conduct or other grounds for the Board to take disciplinary action pursuant to:

A. A.R.S. §32-1401(25)(a) violating any federal or state laws or rule and regulations applicable to the practice of medicine.

B. A.R.S. §32-1401(25)(p), sanctions imposed by an agency of the federal government, including restricting, suspending, limiting or removing a person from the practice of medicine or restricting that person's ability to obtain financial remuneration.

C. A.R.S. §32-1451(A), ... is or may be mentally or physically unable to safely engage in the practice of medicine.

3. Pursuant to A.R.S. §32-1451(G), after completing the informal interview, the Board may order appropriate action which for the purpose of the final disposition of this matter is described in the following Order.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED as follows:

1. Dr. Cudak's license to practice medicine in the State of Arizona is place on probationary status and her ability to practice as a physician is restricted and limited to solely reviewing, evaluating and reporting on patient charts and **medical care an~~f~~d treatment**; and, said probationary status shall continue indefinitely until such time as Dr. Cudak appears before the Board and is able to provide sufficient evidence demonstrating that she should be allowed to engage in other activity involving the practice of medicine.

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2. This Order and the foregoing Findings of Facts and Conclusions of Law shall constitute a Letter of Reprimand, as defined at A.R.S. §32-1401(15), to Dr. Cudak for dispensing large amounts of controlled substances without maintaining the appropriate documentation and complying with the aforementioned federal statutes and DEA regulations.

3. Dr. Cudak is hereby notified that she may file a Motion for Rehearing in this matter requesting reconsideration of the Board's decision. Said Motion for Rehearing must be filed with the Board's Executive Director within thirty (30) days after service of this Order or the right to submit said motion is waived; and, service of this Order is effective upon date of mailing. To obtain an Order from the Board granting the Motion for Rehearing and Reconsideration, Respondent must comply with the requirements of Board Administrative Rule A.A.C. R4-16-102(C), and establish good cause for granting said motion.

ISSUED AND EFFECTIVE this 25th day of September, 1998.

ARIZONA BOARD OF MEDICAL EXAMINERS

Claudia Foutz

CLAUDIA FOUTZ, Executive Director
1651 East Morten, Suite 210
Phoenix, Arizona 85020
(602) 255-3751

COPY sent this 28 day of September, 1998, by U.S. Certified Mail, Return Receipt Requested, to:

Sophia Cudak, M.D.
9239 South Oak Street
Tempe, Arizona 85284
(Last Known Address of Record)

COPY of the foregoing mailed this 28 day of September, 1998, by U.S. Mail, to:

Jeff Bouma
Attorney at Law
649 North Fourth Avenue
Phoenix, Arizona 85003
Attorney for Respondent

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Arizona State Board of Pharmacy
Attention: L.A. Lloyd, Executive Director
5060 North 19th Avenue, Suite 101
Phoenix, Arizona 85015

Drug Enforcement Administration
Attention: Barbara Roberts, Group Supervisor
Phoenix Field Division
3010 North 2nd Street, Suite 301
Phoenix, Arizona 85012

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