

BEFORE THE BOARD OF MEDICAL EXAMINERS  
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-08-0306-MED REGARDING:

|                             |   |                   |
|-----------------------------|---|-------------------|
| THE PROPOSED DISCIPLINARY   | ) | Case No. 817-2008 |
| TREATMENT OF THE LICENSE OF | ) |                   |
| BRIDGETTE J. MAZUREK,       | ) |                   |
| License No. 16.             | ) |                   |
|                             | ) |                   |

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**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;  
AND RECOMMENDED ORDER**

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**I. INTRODUCTION**

On October 23, 2007, the Montana Department of Labor and Industry's Business Standards Division (BSD) filed a complaint against the acupuncturist license of Bridgette Mazurek. The complaint alleged that Mazurek violated Mont. Code Ann. § 37-1-316(4) (signing or issuing in the licensee's professional capacity a document or statement the licensee reasonably knows to contain a false or misleading statement), Mont. Code Ann. § 37-1-316(10) (addiction to a habit forming drug), Mont. Code Ann. § 37-1-316(11) (use of habit forming drug which use impairs the user physically or mentally), Mont. Code Ann. § 37-1-316(12) (having a physical or mental disability that renders the licensee unable to practice the profession with reasonable skill and safety), Mont. Code Ann. § 37-1-316(18) (conduct that does not meet the generally accepted standards of practice), Admin. R. Mont. 24.156.1412(13) (habitual intemperance or excessive use of an addictive drug), and Admin. R. Mont. 24.156.1412(23) (any other act that constitutes unprofessional conduct).

Hearing Examiner Gregory L. Hanchett held a contested case hearing in this matter on April 11, 2008. Michael L. Fanning, agency legal counsel, appeared on behalf of the Business Standards Division (BSD). Mazurek appeared on her own behalf.

Prior to the hearing, the licensee admitted that she had violated statutory and administrative provisions as alleged in the complaint. The matter then proceeded to hearing on the sole issue of the appropriate sanctions to be imposed. The parties stipulated to the admission of BSD's Exhibits 1 through 11 and Mazurek's Exhibits A through H. In addition, BSD's Exhibit 12 was admitted during the hearing. Mazurek, Michael Ramirez, Donald Beans, Sarah Marie, Charles Petaja, William Holmes, and Connie Kologi all testified under oath. Based on the evidence adduced at the hearing, the following findings of fact, conclusions of law, and recommended order are made.

## II. FINDINGS OF FACT

1. At all times pertinent to this matter, Mazurek has been a Montana licensed acupuncturist holding License No. 16.

2. Mazurek has had a history of alcohol abuse. Because of problems stemming from her alcohol abuse which potentially could have affected her practice, the Board of Medical Examiners initiated formal disciplinary proceedings against Mazurek. As a result of these proceedings, on August 15, 2005, Mazurek entered into a formal written aftercare agreement with the Montana Professional Assistance Program (MPAP) that included specific terms related to Mazurek's alcohol abuse and dependence. Those terms included the following numbered provisions:

\* \* \*

2. I agree to abstain completely from the use of alcohol . . . . If for some reason I do ingest or otherwise use such a substance without the required prescription or prior approval, I agree to notify an MPAP representative immediately.

\* \* \*

17. I agree to notify the MPAP in the event of use of any mood- altering substances without a prescription from my Primary Care Physician or one of the other health care providers listed above.

\* \* \*

19. If at any time the MPAP staff has reasonable concern that I am impaired in my ability to practice and may be endangering the public health or safety, I authorize them to investigate and evaluate any/all allegations of behavior that may violate the terms of this agreement or constitutes unprofessional conduct. I understand that violation of this agreement may result in MPAP reporting me to the Professional Licensing Board, with the understanding that MPAP will disclose all information in my case file to the Licensing Board. I also agree to enter an in-patient treatment facility recommended by MPAP.

I understand that violation of this agreement shall result in MPAP reporting said violation to the Professional Licensing Board, the participants hospital of the county/regional medical and/or dental society.

The terms of the MPAP agreement also required that she adhere to the MPAP protocol contained in her contract for a period of three years.

3. Michael Ramirez, clinical coordinator at MPAP, was assigned to work as Mazurek's advocate at MPAP. He was responsible for ensuring that Mazurek met the MPAP requirements so that she remained in compliance with her MPAP agreement.

4. Ramirez holds a Masters of Science in rehabilitation counseling from the University of Montana. He also is a nationally certified rehabilitation counselor and a member of the federation of State Physician and Health Programs. His experience and expertise as demonstrated through his testimony qualified him to testify as an expert in this case.

5. Ramirez testified, and the hearing examiner finds, that alcoholism and drug addiction is a progressive biophysical disease that affects persons like Mazurek adversely. The progression of such addiction eventually leads to the loss of cognition, loss of function, a loss of motor skills, and ultimately, if left untreated, can result in death. Given the skills necessary to safely practice acupuncture, it is clear that Mazurek's alcohol addiction, if left untreated or improperly treated, could imperil the health of her patients.

6. Mazurek had difficulty complying with her MPAP contract. For example, in January 2006, Mazurek failed to comply with her alcohol monitoring by failing to report for urinalysis checks or by not timely providing a urinalysis. Under the protocol of her MPAP agreement, Mazurek's untimely and missed urinalysis were considered to be positive tests for alcohol.

7. Upon learning of Mazurek's missed and untimely urinalysis, Ramirez admonished her that she must comply with her MPAP agreement. He also reminded her of the consequences of failing to comply with the terms of her agreement and he further insisted that she comply with the terms.

8. On December 26, 2006, Mazurek was arrested for driving under the influence (DUI). She was later convicted on the charge, making this conviction her third DUI conviction.

9. Mazurek failed to notify MPAP that she had been arrested for DUI.

10. Mazurek violated the conditions of her MPAP contract by consuming alcohol and by failing to immediately notify MPAP of the DUI incident. Upon learning of the violations, MPAP, on April 9, 2007, notified the Board of Medical Examiner's screening panel of Mazurek's violations. MPAP further informed the Board of Medical Examiners that it had directed Mazurek to withdraw from professional practice and seek evaluation. In addition, MPAP, based on Mazurek's demonstrated history of alcohol abuse, required that she agree to extend her MPAP agreement for as long as she remained licensed in Montana.

11. MPAP's request that Mazurek extend her MPAP agreement for as long as she would remain licensed in Montana was appropriate in light of Mazurek's history of alcohol

abuse and continued problems with that abuse as demonstrated by her December 26, 2006 DUI. Indeed, the requirement was consistent with what MPAP has required of other health professionals regulated by the Board of Medical Examiners who had exhibited similar difficulties with MPAP compliance.

12. By letters dated May 23, 2007 and June 28, 2007, Mazurek, through her attorney, advised MPAP that she intended to refuse MPAP's demand to withdraw from practice and seek evaluation.

13. At its May 25, 2007 and July 27, 2007 meetings, the screening panel took up the issue of Mazurek's refusal of MPAP's directive. The screening panel voted to require Mazurek to comply with MPAP's amended aftercare contract. To that end, on August 9, 2007, the Board served a letter upon Mazurek requiring that she comply with MPAP's amended aftercare contract.

14. Mazurek received the Board's letter of August 9, 2007. She understood the implications of failing to comply with the Board's directive. Nonetheless, she refused to abide by the Board's directive. At this point, Ramirez withdrew as Mazurek's advocate.

15. On September 21, 2007, the Board of Medical Examiners considered Mazurek's refusal to abide by its directive. Mazurek attended the meeting in person. At the meeting, the Board reiterated its directive to Mazurek that she must re-enroll in MPAP on the terms dictated by MPAP. Again, Mazurek refused.

16. Mazurek's rationale for balking at the MPAP's and the Board's aftercare treatment program was her belief that the required program was far too restrictive. She offered to engage in other less restrictive aftercare programs. These programs, however, would not provide the level of aftercare necessary to ensure the protection of the public. As Ramirez testified, and the hearing examiner finds:

There were a number of reasons why [Mazurek's suggested aftercare would not work], the principle [reason] of which was Ms. Mazurek had failed treatment two previous occasions, there was an element of public safety that had not been assessed as part of the evaluation . . .

[S]he had been in treatment, . . ., on two previous occasions and despite local support, despite completion of residential treatment, despite monitoring, had failed to remain abstinent and had suffered multiple relapses, returned to use of mood altering substance.

Record transcript, Page 36, lines 10 through 14, Page 37, lines 1 through 6.

17. As Ramirez further articulated and the hearing examiner finds, Mazurek's suggested aftercare alternatives were "essentially outpatient treatment for someone that with subsequent DUI would be facing felony charges . . ." Record transcript, page 36, lines 15 through 19. Her suggested alternatives were clearly insufficient to protect the public.

18. The inadequacy of Mazurek's proposed aftercare is amply demonstrated by the facts of this case. Mazurek had twice been in treatment and despite this, she committed yet another DUI in December 2006. The facts show that nothing short of the MPAP required aftercare treatment, which includes a requirement that she remain under MPAP care for as long as she is licensed in Montana, will be adequate to protect the public.

19. Unless Mazurek comports with the MPAP proposed aftercare, Mazurek cannot be allowed to practice because the safety of the public cannot be guaranteed.

### **III. CONCLUSIONS OF LAW**

1. The licensee conceded that she had violated statutes and regulations as alleged in the complaint. Thus, the only determination left for the hearing examiner on the underlying complaint was the appropriate sanction or sanctions to be imposed in light of the violations.

2. A regulatory board may impose any sanction provided for by Montana Code Annotated Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Montana Code Annotated § 37-1-312 provides that a regulatory board may impose a license suspension, probation with terms, and a fine not to exceed \$1,000.00 per occurrence.

3. To determine which sanctions are appropriate, the regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the Board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

4. BSD has requested that Mazurek's license be suspended until such time as she agrees to adhere to the revised aftercare agreement proposed by MPAP. Mazurek objects on the basis that she believes the revised aftercare agreement is too restrictive because it requires her to be enrolled in a MPAP aftercare requirement for as long as she chooses to practice acupuncture in Montana.

5. It is abundantly clear from the evidence (especially the testimony of Ramirez, which the hearing examiner finds to be compelling) that the public cannot be protected and Mazurek cannot be permitted to continue to practice unless Mazurek agrees to remain in the MPAP aftercare program under the terms of the revised MPAP agreement which includes perpetual enrollment in MPAP. The alternatives to MPAP aftercare which she has offered are not adequate to protect the public. This is because Mazurek's alternatives will not provide an adequate level of assurance that she will not relapse into her alcohol abuse and pose a threat to

clients who receive acupuncture due to diminished skills levels which will result from her alcohol abuse.

6. Under the circumstances of this case, Mazurek's license must be suspended until such time as she agrees to be bound by the amended MPAP agreement which includes MPAP participation for as long as Mazurek wishes to practice acupuncture in Montana. Mazurek has repeatedly demonstrated her unwillingness to be bound by the amended MPAP requirements through her repeated refusal, both to the Board and MPAP, to accept the amended conditions of the MPAP proposal. Mazurek has no right to practice acupuncture in the State of Montana free from regulation properly and reasonably calculated to protect the health, safety and welfare of the public. See, e.g., *Wiser v. State*, 2006 MT 20, ¶24, 331 Mont. 28, ¶24, 129 P.3d 133, ¶24. Her ability to practice in Montana is conditioned upon her ability to safely practice her profession upon the citizens of Montana. Because her ability to safely practice cannot be assured by anything short of adherence to the amended MPAP aftercare agreement, it is appropriate to require her to accept and adhere to the amended MPAP requirements or face a license suspension until such time as she agrees to do so.

#### IV. RECOMMENDED ORDER

Based upon the foregoing, it is recommended that the Board enter its order suspending Mazurek's license until such time as she enters into the amended aftercare agreement proposed by MPAP.

DATED this 30th day of May, 2008.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT  
GREGORY L. HANCHETT  
Hearing Examiner

#### NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.

MAZUREK.FOF.GHD