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BEFORE THE ARIZONA REGULATORY BOARD
OF PHYSICIAN ASSISTANTS

In the Matter of
WAGNER GERVAIS, P.A.
Holder of License No. 8510
For the Performance of Health Care Tasks
In the State of Arizona

Case No. 23A-8510-PAB
**ORDER DENYING MOTION FOR
REHEARING OR REVIEW**

At its public meeting on February 28, 2024, the Arizona Regulatory Board of Physician Assistants (“Board”) considered Wagner Gervais, P.A.’s (“Respondent”) Motion for Rehearing or Review of the Board’s Order dated November 29, 2023 in the above referenced matter. Respondent was present and represented by Counsel, Michael Goldberg, Esq. The State was represented by Assistant Attorney General Elizabeth Campbell. The Board received independent legal advice from Assistant Attorney General Diane DeDea. After considering all of the evidence, including arguments of the parties, the Board voted to deny Respondent’s Motion for Rehearing or Review for the reason that he failed to demonstrate that he was entitled to a rehearing or review for any of the reasons set forth in A.A.C. R4-16-103(D).

ORDER

IT IS HEREBY ORDERED that:

Respondent’s Motion for Rehearing or Review is DENIED. The Board’s November 29, 2023 Findings of Fact, Conclusions of Law, and Order for revocation of Respondent’s license in Case 23A-8510-PAB is effective and constitutes the Board’s final administrative order.

1 **RIGHT TO APPEAL TO SUPERIOR COURT**

2 Respondent is hereby notified that he has exhausted his administrative remedies.
3 Respondent is advised that an appeal to Superior Court in Maricopa County may be taken
4 from this decision pursuant to title 12, chapter 7, article 6 of the Arizona Revised Statutes
5 within thirty-five (35) days from the date this decision is served.

6 DATED AND EFFECTIVE this 4th day of March, 2024.

7 ARIZONA REGULATORY BOARD
8 OF PHYSICIAN ASSISTANTS

9
10 By 
11 Patricia E. McSorley
12 Executive Director

13 EXECUTED COPY of the foregoing mailed via
14 US and Certified Mail
15 this 4th day of March, 2024 to:

16 Wagner Gervais, P.A.
17 Address of Record

18 Michael Goldberg
19 Goldberg Law Group, LLC.
20 60 E. Rio Salado Parkway, Suite 900
21 Tempe, Arizona 85281
22 Attorney for Respondent

23 ORIGINAL of the foregoing filed
24 this 4th day of March, 2024 with:

25 Arizona Regulatory Board of Physician Assistants
1740 West Adams, Suite 4000
Phoenix, Arizona 85007


Board staff

1 **BEFORE THE ARIZONA REGULATORY BOARD**
2 **OF PHYSICIAN ASSISTANTS**

3 In the Matter of
4 **WAGNER GERVAIS, PA,**
5 Holder of License No. 8510
6 For the Performance of Health Care Tasks
7 In the State of Arizona.

Case No.23A-8510-PAB

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
(License Revocation)**

8 On November 29, 2023, this matter came before the Arizona Regulatory Board of
9 Physician Assistants ("Board") for consideration of Administrative Law Judge ("ALJ")
10 Adam D. Stone's proposed Findings of Fact, Conclusions of Law and Recommended
11 Order. Wagner Gervais, PA, ("Respondent") was represented by Michael Goldberg, Esq.;
12 Assistant Attorney General Elizabeth A. Campbell, represented the State. Assistant
13 Attorney General Diane DeDea was available to provide independent legal advice to the
14 Board.

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

17 **FINDINGS OF FACT**

18 **BACKGROUND AND PROCEDURE**

19 1. The Board is the authority for the regulation and control of the performance
20 of health care tasks by physician assistants in the State of Arizona.¹

21 2. Respondent was a physician's assistant who holds Board-issued License No.
22 8510 for the performance of health care tasks in the State of Arizona.

23 3. On April 26, 2021, Respondent submitted his application for licensure in
24 Arizona through Universal Recognition under A.R.S. § 32-4302(A). Respondent reported
25 his address as 8328 W, Devonshire Ave, in Phoenix and attested to the same.
Respondent also submitted a copy of a one-year lease agreement for that address and the
appropriate application fee.

¹ See Arizona Revised Statutes ("ARIZ. REV. STAT.") § 32-2501 et seq.; see also Arizona Administrative Code ("ARIZ. ADMIN. CODE") Title 4, Chapter 17, Articles 1-3.

1 not employed by ICE, Mr. Gervais testified that he would like to obtain employment in
2 Arizona, to relocate his family to Arizona.

3 11. Mr. Gervais testified that he and Albert Buissereth each rented a room from
4 Leslie Brown² per the rental agreement dated April 1, 2021.³ The rent was \$600.00 per
5 month.⁴

6 12. Further, Mr. Gervais testified that he paid rent of \$250.00 per month,⁵
7 however, he did not have a key to the residence nor did he sleep at the residence. Mr.
8 Gervais explained that while he was Arizona, he would stay in hotels for privacy reasons
9 and wanted to wait to move into the house until he had employment.

10 13. As to the Application, Mr. Gervais testified that he was in Arizona when he
11 completed the Application and acknowledged that he “checked” number 9 on the same,
12 acknowledging that he had established residency in Arizona.⁶

13 14. Mr. Gervais testified that or about April 27, 2022, he updated his address to
14 3588 W. 13th St. in Yuma, Arizona,⁷ and provided a copy of a lease dated January 2, 2023
15 between himself and Harold Pierre-Louis and the landlord Bilkis Jolaosho.⁸ Mr. Gervais
16 also testified that he obtained an Arizona Driver’s License on April 26, 2023,⁹ and
17 registered to vote in Yuma, Arizona on or about April 27, 2023.¹⁰

18 15. Also, Mr. Gervais testified that he did not know the difference between a
19 “home address” and a “residence”.

20 16. Finally, Mr. Gervais testified that he was working at “Accident Clinic” in Yuma,
21 Arizona, and believed that once his contract was completed, he would stay in Yuma to look
22 for work on his own.

23 Ms. Young’s testimony

24 _____
25 ² Some of the paperwork indicated that Ms. Brown's last name was "Jones".

³ See Board Exhibit 3.

⁴ *Id.*

⁵ See Respondent Exhibit B.

⁶ See Board Exhibit 2 at PAB-016.

⁷ See Board Exhibit 5.

⁸ See Respondent Exhibit F.

⁹ See Respondent Exhibit D.

¹⁰ See Respondent Exhibit E.

1 17. Ms. Young was the Licensing Investigations Manager for the Board. She
2 testified that she investigated Respondent as there were subsequent applications
3 submitted which contained the same Devonshire address.

4 18. Further, Ms. Young testified that in order to qualify for licensure under the
5 Universal Recognition, the statute required an Applicant to have residency in Arizona.
6 However, on cross-examination she admitted that there was no definition of residency
7 contained in the Application packet.¹¹

8 CONCLUSIONS OF LAW

9 1. The Board is the duly constituted authority for licensing and regulating the
10 practice of physician assistants in the State of Arizona. This matter lies within its
11 jurisdiction.¹² The matter was properly brought before the Office of Administrative Hearings
12 pursuant to Ariz. Rev. Stat. §§ 41-1092 *et seq.*

13 2. The Board bears the burden of proof to establish cause to sanction
14 Respondent's physician's assistant license by a preponderance evidence.¹³ Respondent
15 bears the burden to establish factors in mitigation of the penalty and affirmative defenses
16 by the same evidentiary standard.¹⁴

17 3. "A preponderance of the evidence is such proof as convinces the trier of
18 fact that the contention is more probably true than not."¹⁵ A preponderance of the
19 evidence is "[t]he greater weight of the evidence, not necessarily established by the greater
20 number of witnesses testifying to a fact but by evidence that has the most convincing force;
21 superior evidentiary weight that, though not sufficient to free the mind wholly from all
22 reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the
23 issue rather than the other."¹⁶

24 4. Ariz. Rev. Stat. § 32-4302(A) provides in pertinent part:

25 Notwithstanding any other law, an occupational or professional license or
certificate shall be issued, in the discipline applied for and at the same

26 ¹¹ See Board Exhibit 1.

27 ¹² See ARIZ. REV. STAT. § 32-2501 *et seq.*

28 ¹³ See ARIZ. REV. STAT. §§ 41-1092.07(G)(2) and ARIZ. ADMIN. CODE R2-19-119(A) and (B)(1); *see also*
29 *Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

30 ¹⁴ See ARIZ. ADMIN. CODE R2-19-119(B)(2).

31 ¹⁵ Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

32 ¹⁶ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 practice level as determined by the regulating entity, pursuant to this title
2 to a person who establishes residence in this state or without an
3 examination to a person who is married to an active duty member of the
4 armed forces of the United States and who is accompanying the member
to an official permanent change of station to a military installation located
in this state if all of the following apply: . . .

5 5. A.R.S. § 32-2501(18)(n) defines “unprofessional conduct” as procuring or
6 attempting to procure a physician assistant license by fraud, misrepresentation or
7 knowingly taking advantage of the mistake of another.

8 6. A.R.S. § 32-2501(18)(y) defines “unprofessional conduct” as violating or
9 attempting to violate, directly or indirectly, or assisting in or abetting the violation of or
conspiring to violate a provision of this chapter.

10 7. A PA must establish residency as a condition to receiving a license in
11 Arizona under A.R.S. § 32- 4302(A). The Board has established by a preponderance of the
12 evidence that Respondent had not established Arizona residency at the time that the Board
issued a PA license to Respondent.

13 8. Likewise, the tribunal was not persuaded that Mr. Gervais did not know
14 the difference between a home address and a residence. While Mr. Gervais was born in
15 Haiti, he had resided in the United States since 1967 (but for the time spent in Mexico),
16 and obtained a medical degree. Thus, Mr. Gervais was a smart man and should have
known the difference between a home address and residence.

17 9. Even if the tribunal was convinced that Mr. Gervais did not know the
18 difference between a home address and residence, the evidence established that
19 Devonshire address was neither. By his own testimony, Mr. Gervais stated he never slept
20 at, nor did he have a key to the Devonshire address. Further, Mr. Gervais testified that
21 while he was waiting to see if he would obtain employment, he would stay at hotels, which
22 was not persuasive when he was paying \$250.00 per month for a room in which he could
have stayed in while he was in town.

23 10. The Board established by a preponderance of the evidence that
24 Respondent engaged in unprofessional conduct as he attempted to obtain a license by
25 fraud, or misrepresentation in violation of A.R.S. §§ 32-2501(18)(n) and failed to maintain a

1 current residence address with the Board in violation of 32-2501(18)(y) and A.R.S. § 32-
2 2527(A).

3 11. Based upon Respondent's failure to provide that he was establishing
4 residency timely, and then failing to timely update his address, the Board has established
5 cause to revoke Respondent's physician's assistant license under Ariz. Rev. Stat. § 32-
6 2551(J).

7 **ORDER**

8 Based on the foregoing, it is **ORDERED** that on the effective date of the Board's
9 final order in this matter, Respondent's License No. 8510 for the performance of health
10 care tasks in the State of Arizona be revoked.

11 It is further ordered that, pursuant to A.R.S. § 32-2551(M),¹⁷ Wagner Gervais, P.A.,
12 be charged for the cost of the formal hearing as determined by the Board. Respondent
13 shall pay the Board \$1,436.80 by certified funds, within 90 days of the effective date of this
14 Order.

15 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

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

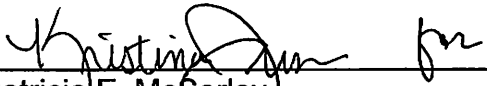
24 ...
25 ...

17 A.R.S. § 32-2551(M) provides: "The board may charge the costs of a formal hearing to the licensee if it finds the licensee in violation of this chapter"

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

3 DATED this 29th day of November 2023.

4 THE ARIZONA REGULATORY BOARD OF
5 PHYSICIAN ASSISTANTS

6 By 
7 Patricia E. McSorley
8 Executive Director

9 ORIGINAL of the foregoing filed this
10 29th day of November, 2023 with:

11 Arizona Regulatory Board of Physician Assistants
12 1740 W. Adams, Suite 4000
13 Phoenix, Arizona 85007


14 COPY of the foregoing filed this
15 29th day of November, 2023 with:

16 Greg Hanchett, Director
17 Office of Administrative Hearings
18 1740 W. Adams
19 Phoenix, AZ 85007

20 Executed copy of the foregoing
21 mailed by U.S. Mail and emailed this
22 29th day of November, 2023 to:

23 Wagner Gervais, PA
24 Address of Record
25 Michael Goldberg
26 GOLDBERG LAW GROUP, LLC
27 16247 N. Scottsdale Rd., Suite 200

28 Elizabeth A. Campbell
29 Assistant Attorney General
30 Office of the Attorney General
31 SGD/LES
32 2005 N. Central Avenue
33 Phoenix, AZ 85004

34 
35 # 11692632