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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, *ex rel.* MARK
 BRNOVICH, Attorney General,

Plaintiff,

v.

INSYS THERAPEUTICS, INC., *et al.*,

Defendants.

Case No: CV2017-012008

**CONSENT JUDGMENT WITH
 DEFENDANTS SHELDON GINGERICH
 AND DEBORA WOOD**

(Tier 3 case)

(Assigned to the Hon. Randall Warner)

STATE OF ARIZONA, *ex rel.* MARK
 BRNOVICH, Attorney General,

Plaintiff,

v.

JOHN KAPOOR, *et al.*,

Defendants.

Consolidated with Case No: CV2019-010695

The State of Arizona, *ex rel.* Mark Brnovich, the Attorney General (the “State”), having filed a complaint alleging violations of the Arizona Consumer Fraud Act, Arizona Revised Statutes (“A.R.S.”) § 44-1521, *et seq.*, and the defendants Sheldon Gingerich (“Defendant Gingerich”) and Debora Wood (and together with Defendant Gingerich, “the “Gingerich Defendants”) having been served with a copy of the complaint and having been fully advised of the right to a trial in this matter and having waived the same, the State and Gingerich Defendants (collectively, the “Parties”) agree to the entry of this Consent Judgment by this Court without trial or adjudication of any issue of fact or law and without any admission or finding of any violations of any laws, guilt, liability, sanction, penalty, or wrongdoing. Solely for purposes of this Consent Judgment, the Gingerich Defendants admit the jurisdiction of this Court over the subject matter and parties, and Defendant Gingerich acknowledges that this Court will retain jurisdiction for the purpose of enforcing this Consent Judgment. The Parties acknowledge and agree that the Gingerich Defendants have consented and stipulated to entry of this Consent Judgment solely as a compromise of disputed claims, and the Gingerich Defendants do not admit any liability, guilt, wrongdoing, violation, or sanction.

NOW, THEREFORE, upon the consent of the Parties hereto, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

FINDINGS OF FACT

1. Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, Attorney General, who is authorized to bring this action under the Arizona Consumer Fraud Act, A.R.S. § 44-1521, *et seq.* (the “ACFA”).

2. Defendant Gingerich was, at all times relevant, a resident of Arizona.

3. Defendant Debora Wood (“Defendant Wood”) was, at all times relevant, the spouse of Defendant Gingerich, and was named in the underlying action solely for her interest in the marital community. The State does not allege that Defendant Wood violated the ACFA.

4. The State alleges that, at all times relevant, Defendant Gingerich was acting for his own benefit and the benefit of the Gingerich Defendants' marital community.

1 5. The State alleges that:

2 (a) From at least September 13, 2013 to at least July 31, 2015, Defendant
3 Gingerich acted as a paid speaker for Insys Therapeutics, Inc. (“Insys”), and
4 performed educational presentations related to Subsys, a fentanyl-based
5 pharmaceutical product;

6 (b) From at least September 13, 2013 to at least July 31, 2015, Insys paid
7 Defendant Gingerich a combined total of at least \$80,700 to influence him to
8 prescribe Subsys to his patients; and

9 (d) From at least September 13, 2013 to at least July 31, 2015, Defendant
10 Gingerich accepted at least twenty-six (26) payments with a combined total of at
11 least \$80,700 from Insys in exchange for increasing the number and dosage of
12 Subsys prescriptions he wrote for his patients.

13 6. The State alleges that the conduct described in Paragraph 5 above constitutes
14 unfair business practices under the ACFA, and further alleges that Defendant Gingerich knew or
15 should have known that his conduct was of the nature prohibited by the ACFA.

16 7. The Gingerich Defendants expressly deny any and all allegations in Paragraphs 5
17 and 6 above, and deny any and all allegations, liability, guilt, penalties, wrongdoing, claims,
18 and/or causes of action that were or could have been asserted against them in the above-
19 captioned action, including but not limited to the State's ACFA claim. The Gingerich
20 Defendants agree to the entry of this Consent Judgment solely in order to compromise disputed
21 claims, and to avoid the expense and uncertainty of further litigation.

22 8. The Parties represent, warrant and agree that this Consent Judgment, its language,
23 and any agreement to enter this Consent Judgment shall not be construed to be a finding of
24 liability on any claim or an admission by the Gingerich Defendants of any guilt, liability,
25 violation, sanction or wrongdoing in connection with any matter whatsoever. The Parties
26 further represent, warrant and agree that this Consent Judgment, its language, and any agreement
27 to enter into this Consent Judgment shall not be used or construed as an admission or evidence
28 of any alleged wrongdoing or liability by the Gingerich Defendants in any other civil, criminal,

1 administrative proceeding, or board proceeding before any court, administrative body, or
2 tribunal anywhere in the United States of America.

3 CONCLUSIONS OF LAW

4 9. The State alleges that Defendant Gingerich violated the ACFA by engaging in the
5 actions described in Paragraph 5 of this Consent Judgment.

6 10. The State alleges that Defendant Gingerich acted willfully, as defined by
7 A.R.S. § 44-1531(B), while engaging in the acts, practices and conduct described in
8 Paragraph 5 of this Consent Judgment.

9 11. The State alleges that, pursuant to the ACFA, Defendant Gingerich's alleged
10 violations entitle the State to relief necessary to prevent the unlawful acts and practices alleged
11 in this Consent Judgment and to remedy the consequences of past unlawful practices alleged in
12 the State's complaint and this Consent Judgment.

13 12. The Gingerich Defendants expressly deny any and all allegations in Paragraphs 5,
14 6, 9, 10, and 11 above. The Gingerich Defendants further expressly deny any and all
15 allegations, liability, guilt, wrongdoing, claims, and/or causes of action that were or could have
16 been asserted against them in the above-captioned action, including but not limited to the
17 State's ACFA claims.

18 13. The State and the Gingerich Defendants acknowledge and agree that the
19 Gingerich Defendants have not been found liable or guilty for any claim, wrongdoing, and/or
20 cause of action asserted against them in the above-captioned action, including but not limited to
21 the State's ACFA claims.

22 14. This Consent Judgment, its language, and any agreement to enter this Consent
23 Judgment shall not be construed to be a finding of liability on any claim against the Gingerich
24 Defendants or a finding, determination, or an admission by the Gingerich Defendants of any
25 guilt, liability, violation, sanction or wrongdoing whatsoever. This Consent Judgment, its
26 language, and any agreement to enter into this Consent Judgment shall not be used or construed
27 as an admission or evidence of any alleged wrongdoing or liability by the Gingerich
28 Defendants in any other civil, criminal, administrative proceeding, or board proceeding before

any court, administrative body, or tribunal anywhere in the United States of America.

ORDER

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

15. The relief set forth in Paragraph 16 of this Consent Judgment is binding upon any of the following that receive actual notice of this Consent Judgment through personal service or otherwise: (a) Defendant Gingerich; (b) his officers, agents, servants, and employees; and (c) those persons in active concert or participation with Defendant Gingerich or any of his officers, agents, servants, and employees.

16. Defendant Gingerich agrees that he shall not:

- a. Engage in future conduct that constitutes a violation of the ACFA as currently written, and as it may be amended in the future;
- b. Prescribe controlled substances while located in Arizona or to any person located in Arizona;
- c. Receive financial compensation from any pharmaceutical company while located in Arizona; and
- d. Receive financial compensation for practicing medicine within Arizona, unless Defendant Gingerich receives financial compensation in connection with his participation in or work related to clinical trials or medical studies and all such compensation actually received by Defendant Gingerich in connection with such clinical trial or medical study work is donated to a charitable organization.

17. The State agrees that this Consent Judgement shall have no effect on Defendant Gingerich's license to practice medicine, except as set forth in Paragraph 16.

18. Defendant Gingerich agrees to pay the Arizona Attorney General the sum of \$131,500, which is due at the time of entry of this Consent Judgment and shall be deposited into the Consumer Protection-Consumer Fraud Revolving Fund.

19. The payment required herein must be paid in the form of a cashier's check or money order made payable to "The State of Arizona." Payment must be delivered, or mailed

1 and postmarked, to:

2 Consumer Protection and Advocacy Section
3 The Office of the Arizona Attorney General
4 2005 N. Central Ave.
Phoenix, AZ 85004

5 20. Nothing in this Consent Judgment will be construed as an approval by the
6 Attorney General, the Court, the State of Arizona, or any agency thereof of the Gingerich
7 Defendants' alleged past, present, or future conduct. The Gingerich Defendants shall not
8 represent or imply that the Attorney General, the Court, the State of Arizona, or any agency
9 thereof has approved or approves of the Gingerich Defendants' alleged actions or any of the
10 Gingerich Defendants' alleged past, present or future business practices.

11 21. This Consent Judgment, its language, and any agreement to enter this Consent
12 Judgment shall not be construed to be a finding of liability on any claim against the Gingerich
13 Defendants or a finding, determination, or an admission by the Gingerich Defendants of any
14 guilt, liability, violation, sanction or wrongdoing whatsoever. This Consent Judgment, its
15 language, and any agreement to enter into this Consent Judgment shall not be used or construed
16 as an admission or evidence of any alleged wrongdoing or liability by the Gingerich
17 Defendants in any other civil, criminal, administrative proceeding, or board proceeding before
18 any court, administrative body, or tribunal anywhere in the United States of America.

19 22. The Gingerich Defendants warrant and represent that there is not any pending
20 case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation,
21 dissolution, discharge, or recomposition of the Gingerich Defendants or their debts under any
22 law relating to bankruptcy, insolvency, reorganization, or the relief of debtors, or seeking the
23 appointment of a receiver, trustee, custodian, or other similar official for the Gingerich
24 Defendants. The Gingerich Defendants further warrant and represent that they will not file, or
25 cause to be filed, any such case, proceeding, or other action prior to ninety-one (91) days after
26 complete payment of all amounts due under this Consent Judgment. If the Gingerich
27 Defendants do file or cause to be filed such a case, proceeding, or other action prior to the
28 expiration of that time, then the State will have the right, at its sole discretion, to treat that as a

1 material breach of this Consent Judgment, reopen proceedings, and proceed with this case as
2 though this Consent Judgment had not been entered, provided that the Gingerich Defendants
3 will be entitled to an offset for any amount Defendant Gingerich already paid to the State under
4 this Consent Judgment.

5 23. The Gingerich Defendants must provide the State with written notice within
6 fifteen (15) days of the Gingerich Defendants filing or causing to be filed any case, proceeding,
7 or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution,
8 discharge, or recomposition of the Gingerich Defendants or their debts under any law relating
9 to bankruptcy, insolvency, reorganization, or the relief of debtors, or seeking the appointment
10 of a receiver, trustee, custodian, or other similar official prior to complete payment of all
11 amounts due under this Consent Judgment. If the Gingerich Defendants fail to provide the
12 notice as required, the State will have the right, at its sole discretion, to treat that as a material
13 breach of this Consent Judgment, reopen proceedings, and proceed with this case as though this
14 Consent Judgment had not been entered, provided that the Gingerich Defendants will be
15 entitled to an offset for any amount Defendant Gingerich already paid to the State under this
16 Consent Judgment.

17 24. In the event of a material breach of this Consent Judgment, in addition to all other
18 remedies available under Arizona law and the penalties specifically provided under
19 A.R.S. § 44-1532, the State may, in its sole discretion, reopen proceedings and continue with
20 this case as though this Consent Judgment had not been entered, provided that the Gingerich
21 Defendants will be entitled to an offset for any amount actually paid by Defendant Gingerich to
22 the State.

23 25. The parties acknowledge by the execution hereof that this Consent Judgment
24 constitutes a complete settlement of all allegations contained in the First Amended Complaint
25 and this Consent Judgment as to the Gingerich Defendants, and the State agrees not to institute
26 any civil action against the Gingerich Defendants or their employees or agents relating to the
27 conduct described herein or in the First Amended Complaint. Notwithstanding the foregoing,
28 the State may institute an action or proceeding to enforce the terms and provisions of this

1 Consent Judgment, take action based on future conduct by the Gingerich Defendants, take
2 action based on past conduct not specified in this Consent Judgment, and/or institute an action
3 or proceeding to prevent the discharge of any debt acquired through this Consent judgment.
4 The Gingerich Defendants reserve all rights, remedies, and defenses in connection with any
5 action or proceeding brought by the State.

6 26. This Consent Judgment represents the entire agreement between the parties, and
7 there are no representations, agreements, arrangements, or understandings, oral or written,
8 between the parties relating to the subject matter of this Consent Judgment which are not fully
9 expressed herein or attached hereto.

10 27. If any portion of this Consent Judgment is held invalid by operation of law, the
11 remaining terms thereof will not be affected and will remain in full force and effect.

12 28. Jurisdiction is retained by this Court solely for the purpose of entertaining an
13 application by the State related to the enforcement of this Consent Judgment.

14 29. This Consent Judgment is the result of a compromise and settlement agreement
15 between the Parties. Only the State may seek enforcement of this Consent Judgment. Nothing
16 herein is intended to create a private right of action by other parties.

17 30. This Consent Judgment does not limit the rights of any private party to pursue
18 any remedies allowed by law.

19 31. The effective date of this Consent Judgment is the date that it is entered by the
20 Court.

21 32. This Consent Judgment may be executed by the Parties in counterparts and be
22 delivered by facsimile or electronic transmission, or a copy thereof, such constituting an
23 original counterpart hereof, all of which together will constitute one and the same document.

24 33. This Consent Judgment resolves all claims that were or could have been alleged
25 in the First Amended Complaint as to Defendants Sheldon Gingerich and Debora Wood.
26 Finding no just reason for delay, the Court enters this Consent Judgment pursuant to Ariz. R.
27 Civ. P. 54(b).

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CONSENT TO JUDGMENT

1. Defendants Sheldon Gingerich and Debora Wood “the Gingerich Defendants” acknowledge that they were served with a copy of the Summons and First Amended Complaint have read the Findings of Fact, Conclusions of Law and Order, and are aware of their right to a trial in this matter and have waived the same.

2. The Gingerich Defendants admit the jurisdiction of this Court, and consent to the entry of the foregoing Findings of Fact and Conclusions of Law and Order.

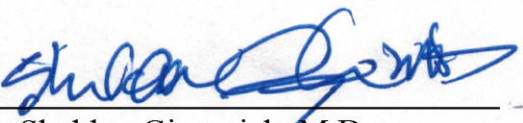
3. The Gingerich Defendants state that no promise of any kind or nature whatsoever was made to induce them to enter into this Consent Judgment and declare that they have entered into this Consent Judgment voluntarily.

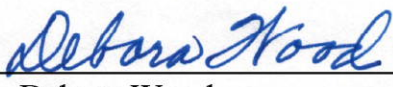
4. This Consent Judgment is entered as a result of a compromise of disputed claims. Only the State may seek enforcement of this Consent Judgment. Nothing herein is intended to create a private right of action by other parties; however, this Consent Judgment does not limit the rights of any private party to pursue any remedies allowed by law.

5. The Gingerich Defendants acknowledge that their acceptance of this Consent Judgment is only for the purpose of resolving all claims that were or could have been asserted in the above-captioned action as to the Gingerich Defendants.

6. This Consent to Judgment may be executed in counterparts and be delivered by facsimile or electronic transmission, or a copy thereof, such constituting an original counterpart hereof, all of which together will constitute one and the same document.


DATED this 13th day of August, 2021.

By: 
Sheldon Gingerich, M.D.


By: 
Debora Wood

1 **APPROVED AS TO FORM AND CONTENT:**

2 **MARK BRNOVICH**
3 Attorney General

4 
5 By: _____
6 Mitchell Allee
7 Assistant Attorney General
8 Attorneys for State of Arizona

QUARLES & BRADY, LLP

9 
10 By: _____
11 Lauren Elliott Stine, Esq.
12 Lukas M. Landolt
13 Attorneys for Defendants Sheldon
14 Gingerich and Debora Wood
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eSignature Page 1 of 1

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Granted as Submitted



/S/ Randall Warner Date: 8/23/2021
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2017-012008

SIGNATURE DATE: 8/23/2021

E-FILING ID #: 13283850

FILED DATE: 8/24/2021 8:00:00 AM

ADAM C ANDERSON

ALAN S BASKIN

ALEXANDRA MIJARES NASH

JENNIFER LYNN BONHAM

JONATHAN GRANT BRINSON

LAUREN ELLIOTT STINE