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No. 58194-9-II

Case #: 1031751

COURT OF APPEALS, DIVISION TWO
STATE OF WASHINGTON

JASON STEVENS,

Appellant,

v.

WASHINGTON STATE HEALTH MEDICAL
ASSISTANT PROGRAM,

Respondent.

PETITION FOR REVIEW

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I. Introduction

A petitioner in an administrative action appeals an agency order suspending his credential to practice as a medical assistant. At the time the State Department of Health filed charges against him, the petitioner did not have a valid medical assistant certificate. The Department's finding that the petitioner had an expired certificate is not supported by the agency record. Under the Uniform Disciplinary Act, the Department cannot take disciplinary action against invalid certificates. Because the Department's final order imposing discipline was contrary to law, this Court should reverse.

II. Identity of Petitioner

Petitioner Jason Stevens seeks review of the Court of Appeals decision terminating review.

III. Court of Appeals Decision

Petitioner seeks review of the Court of Appeals’ unpublished decision issued on May 14, 2024, Stevens v. State Health Medical Assistant Program, No. 58194-9-II, which is attached as Appendix A.

IV. Issue Presented for Review

1. The Court of Appeals erred in finding that the Department of Health it had authority to take disciplinary action against Jason Steven’s medical assistant credentials under the Uniform Disciplinary Act.

V. Statement of the Case

Stevens is a registered nurse. **(RP 83)**.¹ Before becoming a nurse, Stevens worked as a health care assistant (HCA). **(RP 83)**. He received his HCA certificate in 2011. **(RP 83)**.

¹ This Brief uses “RP” to refer to the administrative record and “CP” to the clerk’s papers.

In 2012, the legislature enacted RCW 18.360.080, which stated that the Department of Health (DOH) could not issue any new HCA certificates after July 1, 2013. Instead, DOH was now required to issue medical assistant certificates to any HCA in good standing as of June 30, 2013. As a result, DOH issued Stevens a medical assistant-phlebotomist (MAP) certificate on July 1, 2013. (RP 83).

Stevens let his HCA certificate expire in October 2013. (RP 83). At this time, he was working as a nurse at the federal detention center in SeaTac. (RP 83). In 2014, authorities determined that Stevens had diverted oxycodone pills from patients for his personal use while working at the detention center. (RP 3).

On May 19, 2014, Stevens's wife renewed his MAP certificate without his knowledge. (RP 180, 182, 233). She paid the certification fee online using a

credit card. (RP 180, 182, 233) Two years later, Stevens's wife again renewed his credential without his knowledge, on May 28, 2016. (RP 93). As in 2014, she paid via credit card. (RP 93, 233).

In February 2017, the Medical Assistant Program ("Program") charged Stevens with unprofessional conduct under the Uniform Disciplinary Act (UDA) based on his conduct at the detention center. (RP 3-4). Stevens moved to dismiss the charges. (RP 75-81). He argued that the Program did not have the authority to take disciplinary action against the MAP certificate issued in his name because the certificate was not valid. (RP 75-81). The health law judge denied Stevens's motion. (RP 285).

While the Program's case was pending, the Nursing Care Quality Assurance Commission ("Commission") also charged Stevens with

unprofessional conduct, based on his conduct at the detention center. (RP 1803). The Program stayed its proceedings pending the outcome of the Commission's proceedings. (RP 839). Following an evidentiary hearing, the Commission suspended Stevens's nursing license in 2019. (RP 1560). On the basis of the Commission's finding, a health law judge in the Program's case found that Stevens had engaged in unprofessional conduct under the UDA and indefinitely suspended his MAP certificate. (RP 1727-33).

In his petition for administrative review, Stevens argued that he did not have—nor did he ever have—a valid MAP certificate. (RP 1742-43). The review officer rejected his argument and held that that his MAP certificate “automatically superseded” his older HCA license as a result of the legislation passed in 2012. (RP 1800). Stevens timely filed a petition for

judicial review in Thurston County Superior Court.

(CP 1-4). By agreement, the superior court transferred the appeal to this Court under RCW 34.05.518. (CP 34-38).

On appeal, Stevens argued that the Program did not have lawful authority to discipline him because he did not have a valid MAP certificate. In an unpublished opinion, the Court of Appeals affirmed. (App. 2). The legislature, the Court ruled, properly delegated to DOH the authority to replace Stevens's valid HCA certificate with a valid MAP certificate on July 1, 2013. (App. 8-9). The court also ruled that Stevens "provides no authority to support the proposition that payment of certification fees online with a credit card somehow invalidates the certification." (App. 9).

Stevens petitions this Court for review.

VI. Argument

A. **The Court of Appeals erred in upholding Stevens's indefinite suspension because DOH did not issue him a valid medical assistant certificate.**

In 2013, the DOH issued medical assistant certifications to over 20,000 HCAs without their consent. At this time, over 20,000 medical professionals, like Stevens, became subject to discipline for these involuntarily issued certifications. In upholding Stevens's indefinite suspension, the Court of Appeals did not properly adhere to RCW 18.360.080. And because this case presents an issue of substantial public interest under RAP 13.4, this Court should accept review.

The Administrative Procedure Act governs judicial review of agency decisions under the Uniform Disciplinary Act. RCW 18.130.140; DaVita, Inc. v. Department of Health, 137

Wn.App. 174, 180, 151 P.3d 1095 (2007). This Court may reverse an agency action that is not based on substantial evidence or is contrary to law. RCW 34.05.570(3). This Court reviews agency findings for substantial evidence in the record and its legal conclusions de novo. Stevens bears the burden of showing the invalidity of the Program's order. DaVita, 137 Wn.App. 181; Lawrence v. Department of Health, 133 Wn.App. 665, 671, 138 P.3d 124 (2006). For the reasons discussed below, the Program issued Jason Stevens a medical assistant certificate without lawful authority and then proceeded to take disciplinary action against him on the basis of this unlawfully issued certificate.

Stevens does not dispute that DOH issued a MAP certificate in his name on July 1, 2013. But the record

makes clear that the certificate was not valid when the Program charged him with unprofessional conduct. Therefore, the Court of Appeals erred in concluding that the Program could take disciplinary action against his MAP certificate.

RCW 18.36.080, which codified the new legislation, provides in relevant part:

The department may not issue new certifications for category A or B health care assistants on or after July 1, 2013. The department shall certify a category A or B health care assistant whose certification was in good standing and who was certified prior to July 1, 2013 as a medical assistant-phlebotomist when he or she renews his or her certification.

RCW 18.360.080(3). To certify something is to “attest as being true or as meeting certain criteria.” Black’s Law Dictionary (2nd Pocket Ed. 2001), 91. By law, therefore, the MA could **not** become valid and effective

until **after** he renewed his HCA license. At the time the law was passed, Stevens had not renewed his HCA license. **(RP 83)**. In fact, he never renewed his license – it expired in **October 2013. (RP 908)**.

The Court of Appeals refused to consider his argument, because Stevens ignored D●H's enabling regulation, which states:

●n July 1, 2013, all active certified health care assistant credentials will expire and renewed as medical assistant credentials pursuant to RCW 18.36.080 and 43.70.280. The department will issue a medical assistant credential to a person who had an active health care assistant credential as of June 30, 2013. No fee will be required of the credential holder for this transaction.

Former WAC 246-826-990(2). This regulation, the court ruled, gave D●H the authority to issue Stevens a valid MAP certificate on July 1, 2013.

(App. 8). But the court confuses the issuance of a certificate with the issuance of a “valid” certificate, which could not happen until a certificate holder (like Stevens) when “he or she renews his certification.” RCW 18.360.080(3). In other words, former WAC 246-826-990(2) does not undermine Stevens’s argument, but rather confirms his argument. At the time of issuance, the MAP certificate was not valid.

The UDA gives DOH jurisdiction to make findings of professional misconduct if a medical professional has an expired or active license. RCW 18.130. To that extent, Stevens agrees with the Court of Appeals that the UDS does not distinguish between expired and active licenses. **(App. 7).** But at the relevant times in 2013 and 2014, when he was working at the detention

center, Stevens neither had an active license nor an expired license—his license was inactive. And the UDA **does** distinguish between an inactive license and an active or expired license. RCW 18.130.020

Based on the 2012 legislation, the court of appeals concluded that Steven’s HCA license was “automatically superseded” by his MAP certificate. **(RP 1800)**. This finding conflicts with the plain language of the statute. RCW 18.360.080 merely forbade the Department from issuing any new HCA certificates after July 1, 2013; it **did** not eliminate any HCA certificates currently in effect. In ruling otherwise, the court re-wrote the statute to include self-executing language that the legislature **did** not include.

Furthermore, Stevens ~~did~~ not properly activate the MAP certificate issued in his name. Under applicable Washington Administrative Code (WAC) regulations, an applicant must pay the initial certification fee in person or via mail. WAC 246-08-560(2). Furthermore, an applicant “shall” make payment via check, ~~draft~~, order money order. WAC 246-08-560(2). His wife, Wendy Stevens, paid the certification fee online via credit. **(RP 180, 182, 233)**. Therefore, she ~~did~~ not comply either requirement.

The court of appeals ~~dismissed~~ this argument, holding that Stevens ~~did~~ not provide any support for this argument. But the regulation itself provides the proper authority. WAC 246-08-560 explicitly states: “Fees are ~~due~~ with application for initial licensing and

renewals. The department will not proceed on applications until required fees are paid.” And then the regulation goes on to make clear that the fees must be paid in person or via mail and only via check, draft, or money order.

Even if Stevens had paid at the correct place or using the correct method, his certificate became ineffective the moment he requested a refund. Wendy paid the certification fee under the mistaken belief that payment was a requirement for maintaining her husband’s nursing license. (RP 180). But Stevens did not need an MAP certificate because, under state law, a phlebotomist cannot prescribe, administer, or dispense drugs, which were part of his primary duties at his nursing assignment at BOP. (RP 83, 98). Stevens did not instruct his wife to pay

the certification fee or even realize that she had done so until years later. (RP 83-84).

At Stevens's request, Wendy requested a refund of the initial certificate fee. By regulation, the State "shall" refund any fee "paid erroneously." WAC 246-08-560(3). Wendy's request for a refund was clear and unequivocal. Stevens's MAP certificate, she wrote, "was not applied for, and has not ever been used, and does not apply to [Stevens]." (RP 182). At this point, the State should have immediately refunded the fees and invalidated his license for failure to pay.

For these same reasons, Stevens did not properly activate the MAP certificate in 2016. As in 2014, Wendy erroneously paid the certification fee, thinking that Stevens needed this certificate to continue working as a nurse. (RP 93). As in

2014, she paid this fee online via credit card. (RP 93, 233). And once again, she requested a refund. (RP 93). The State should not have activated a certificate in Steven's name license or even processed Wendy's payment. To have properly activated his certificate, Stevens would have had to have properly paid the initial certification fee plus the required late penalty. WAC 246-827-990(2) (setting forth required fees and late penalties for medical assistant certificates).

VII. Conclusion

For these reasons, this Court should reverse the Program's final order and remand to the Program with an order directing the Secretary of Health to dismiss the statement of charges filed against Stevens.

I certify that this Brief contains 1,994 words, in compliance with RAP 18.17(b).

DATED this 13th day of June 2024.

By: /s/ Brian Christopher Zuanich
Brian C. Zuanich, WSBA #43877
Attorney for Jason Stevens

Certificate of Service

I certify under penalty of perjury under the laws of the State of Washington that on June 13, 2024, I served a copy of this document on Respondent's counsel via the Court's e-service portal.

/s/ Brian Zuanich
Brian Zuanich
Seattle, WA

ZUANICH LAW, PLLC

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

May 14, 2024

DIVISION II

JASON E. STEVENS,

No. 58194-9-II

Appellant,

v.

STATE HEALTH MEDICAL ASSISTANT
PROGRAM,

UNPUBLISHED OPINION

Respondent.

MAXA, J. – Jason Stevens appeals the order entered in the Adjudicative Services Unit of the Department of Health (DOH), which suspended indefinitely Stevens’s credential to practice as a medical assistant.

Stevens is a nurse. At relevant times he held both an active registered nurse (RN) license and a medical assistant-phlebotomist (MAP) certification. Stevens previously had been certified as a health care assistant (HCA). On July 1, 2013, DOH automatically issued the new MAP certification to Stevens and over 20,000 active HCA certification holders pursuant to a statute that phased out HCA certifications and phased in new medical assistant certifications. Stevens’s MAP certification was renewed twice before it expired in May 2018.

From October 2013 through October 2014, Stevens worked as an RN at the Bureau of Prisons Federal Detention Center (Detention Center) in SeaTac. In 2014, the Drug Enforcement Administration and the Office of the Inspector General investigated oxycodone pills that had gone missing at the Detention Center. The investigation revealed that Stevens had diverted over 50 oxycodone pills from patients for his personal use.

The Medical Assistant Program (Program) had disciplinary authority over Stevens's MAP credential. The Program filed a statement of charges against Stevens, alleging that his actions at the Detention Center constituted unprofessional conduct under the Uniform Disciplinary Act (UDA), chapter 18.130 RCW. The health law judge (HLJ) presiding over the matter concluded that Stevens had committed unprofessional conduct in violation of the UDA, and indefinitely suspended his MAP certification. A review officer affirmed the HLJ's order.

Stevens argues that DOH erred in suspending his MAP certification because the certification was invalid and therefore DOH had no authority to suspend it. He claims the certification was invalid because (1) DOH's automatic grant of the MAP certification violated the enabling statute, (2) he did not properly renew the MAP certification because his wife paid the renewal fee online via credit card and not in person or through the mail, and (3) DOH should have invalidated the certification when his wife requested a refund of the MAP certification payment.

We hold that DOH had authority to take disciplinary action because (1) DOH lawfully issued Stevens a MAP certification on July 1, 2013 pursuant to an unchallenged administrative rule, (2) there is no authority for the argument that payment of the renewal fee for the MAP certification by credit card invalidates that certification, and (3) there is no authority for the argument that a refund request for the MAP certification renewal fee invalidates that certification. Accordingly, we affirm the order suspending indefinitely Stevens's medical assistant license.

FACTS

Background

Stevens is a nurse. At various times, Stevens has held several different types of health care credentials. In October 2011, Stevens received his HCA certification. This certification was active as of July 1, 2013. In July 2012, Stevens received his RN license.

In 2012, the legislature enacted RCW 18.360.080, which stated that DOH could not issue new HCAs after July 1, 2013. Instead, DOH was required to issue medical assistant certifications to HCAs in good standing as of July 1, 2013. RCW 18.360.080. The legislature also authorized the Secretary of Health to adopt rules necessary to implement the act. RCW 18.360.070(1)(a). DOH adopted a rule stating that it would issue a medical assistant credential to any person that had an active HCA credential as of June 30, 2013.

DOH issued Stevens a MAP certification on July 1, 2013. The MAP certification automatically superseded his HCA certification. DOH also issued medical assistant certifications to over 20,000 other HCAs on July 1, 2013.

Stevens's MAP credential was due to expire on May 28, 2014. However, DOH received a renewal fee for his credential on May 19, 2014 and renewed it. Stevens's wife paid the certification fee online with a credit card. Stevens claims that he did not know about the renewal payment at the time.

Stevens's MAP credential was due to expire again on May 28, 2016. DOH received the renewal fee on May 28 and again renewed his credential. After that renewal, the credential was set to expire on May 28, 2018.

On February 21, 2017, Stevens's wife submitted a refund request for her May 2014 payment of the MAP certification fee. There is no indication in the record that DOH provided a refund.

Investigation at Detention Center

In October 2013, Stevens started work as a RN at the Detention Center. In 2014, the Office of Inspector and General and the Drug Enforcement Administration opened an investigation into missing oxycodone tablets at the Detention Center. The investigation revealed that Stevens had diverted several oxycodone tablets from four different patients. Stevens also had come to work while impaired on drugs in April 2014, collapsed at work, and was taken to the hospital.

In April 2016, Stevens resigned from his position at the Detention Center.

Disciplinary Proceedings

On February 3, 2017, the Program filed administrative charges against Stevens in the Adjudicative Service Unit of DOH. The charges were based on Stevens's alleged diversion of oxycodone pills from the Detention Center. The Program alleged that Stevens's acts constituted unprofessional conduct under the UDA, RCW 18.130.180(1).

Stevens moved to dismiss the charges and for a writ of mandamus directing the Program to refund his MAP certification fee. He argued that the certification was invalid on various grounds. In July 2017, the HLJ presiding over the case denied Stevens's motion to dismiss and motion for a writ of mandamus.

In July 2018, the Board charged Stevens with unprofessional conduct. The Board's statement of charges also was based on Stevens's alleged removal of oxycodone pills from the Detention Center while he had worked there as an RN. In light of the Board's charges, the HLJ

granted the Program's motion to stay the proceedings pending the outcome of the Board's investigation.

In December 2019 the Board issued findings of fact, conclusions of law, and a final order. The Board concluded that DOH proved by a preponderance of the evidence and by clear and convincing evidence that Stevens committed unprofessional conduct as defined in RCW 18.130.180(6), (7), and (22)(b),¹ and that the conduct made Stevens subject to disciplinary action under the UDA. The Board also determined that Stevens violated various WACs. The Board suspended Stevens's license to practice as an RN indefinitely. In March 2020, the Board issued amended findings of fact, conclusions of law, and a final order.

Hearing and Appeal

In December 2020, the HLJ held a hearing on the Program's statement of charges. In February 2022, the HLJ issued findings of fact, conclusions of law, and an initial order.

The HLJ adopted the Board's findings of fact and conclusions of law as articulated in the March 2020 amended final order. The HLJ concluded that collateral estoppel applied to prevent Stevens from relitigating issues previously litigated in the Board's action against his RN credential. The HLJ ruled that the Program proved by both the preponderance of the evidence and clear and convincing evidence that Stevens violated RCW 18.130.180(5), (6), and (22)(b). The HLJ ordered that Stevens's MAP license be indefinitely suspended.

In March 2022, Stevens filed a petition for administrative review of the HLJ's order. He again argued that he never held a valid MAP certificate. In response, the Program argued that it

¹ A 2023 amendment changed RCW 18.130.180(23) to (22). LAWS OF 2023, ch. 192, § 2. Because the amendment did not change the content of the subsection, we cite to the current version.

had jurisdiction over the validity of credential renewals, and that Stevens was collaterally estopped from relitigating the facts determined by the Board.

In May, the review officer adopted the HLJ's findings of fact and conclusions of law, and entered a final order affirming the HLJ's order. The review officer dismissed Stevens's argument that the MAP credential and certification was invalid and not authorized by law. The review officer concluded that Stevens did not dispute that he paid the renewal fee for the MAP credential on May 19, 2014, thereby renewing the MAP credential. The review officer held that Stevens renewed his MAP credential twice prior to the initiation of the disciplinary investigation, and that despite Stevens claims that his wife had erroneously renewed his credential on May 28, 2016, the evidence in the record did not support the assertion that Stevens's MAP credential was issued erroneously. The review officer concluded that if Stevens had no longer wished to hold the MAP credential, he could have surrendered it to the DOH, but instead he renewed it twice, effectively waiving his argument that the MAP credential was invalid.

Stevens filed a petition for judicial review in Thurston County Superior Court. The superior court transferred the appeal to this court under RCW 34.05.518.

ANALYSIS

A. STANDARD OF REVIEW

We review agency decisions under the Administrative Procedure Act (APA), chapter 34.05 RCW. Our review is limited to the record before the agency. *Petrogas Pacific LLC v. Xczar*, 24 Wn. App. 2d 549, 520 P.3d 1077 (2022), *review denied*, 1 Wn.3d 1019 (2023). Under the APA, we may grant relief from an agency's order based on one of nine reasons listed in RCW 34.05.570(3), if the order is not supported by substantial evidence. RCW 34.05.570(3)(e). "Evidence is substantial if it is sufficient to persuade a rational, fair-minded person that the

declared premise is true.” *Real Carriage Door Co. ex. rel. Rees v. Rees*, 17 Wn. App. 2d 449, 457, 486 P.3d 955 (2021).

We overlay the APA and summary judgment standards of review when an administrative decision is decided on summary judgment. *RCCH Trios Health, LLC v. Dep’t of Health*, 28 Wn. App. 2d 534, 541, 536 P.3d 1189 (2023), *review denied*, 2 Wn.3d 1025 (2024). We review the agency’s ruling de novo and construe all facts and reasonable inferences in the light favorable to the nonmoving party. *Id.*

B. DOH’S AUTHORITY TO SUSPEND MAP CREDENTIAL

Stevens argues that DOH did not have authority to suspend his MAP certificate because the certificate was not valid. We disagree.

The UDA gives DOH jurisdiction to make findings of unprofessional conduct. RCW 18.130. The UDA does not distinguish between expired and active licenses. *Brown v. Chrio. Qual. Assur. Comm’n*, 110 Wn. App. 778, 784, 42 P.3d 976 (2002). Rather, the statute gives DOH jurisdiction “over any person who has held a license and appears to have engaged in unprofessional conduct.” *Id.*

The record shows that Stevens was issued a MAP certification on July 1, 2013. The credential remained active because renewal payment was made on May 19, 2014. Stevens held an active MAP credential throughout the duration of his employment at the Detention Center. Stevens does not challenge these findings of fact. Therefore, it is clear that the Program had authority to take disciplinary action against his MAP certification.

Stevens makes several arguments, claiming that he never had a valid MAP certification. First, he argues that the MAP certificate was never valid because DOH improperly issued the certificate to him on July 1, 2013. He points to RCW 18.360.080(3), which states:

The department may not issue new certifications for category A or B health care assistants on or after July 1, 2013. The department shall certify a category A or B health care assistant whose certification is in good standing and who was certified prior to July 1, 2013 as a medical assistant-phlebotomist *when he or she renews his or her certification.*

(Emphasis added.) Stevens argues that under this statute, the MAP certification could not have been valid until after he renewed his HCA credential. But he did not renew his HCA credential after July 1, 2013; it expired in October 2013. He claims that DOH unlawfully replaced his HCA certification with the MAP certification in violation of RCW 18.360.080(3) because it did not wait until he renewed his certification.

However, in RCW 18.360.070 the legislature authorized DOH to “adopt rules . . . necessary to implement this chapter.” DOH adopted former WAC 246-826-990(2), which stated,

On July 1, 2013, all active certified health care assistant credentials will expire and be renewed as medical assistant credentials pursuant to RCW 18.360.080 and 43.70.280. *The department will issue a medical assistant credential to a person who had an active health care assistant credential as of June 30, 2013.* No fee will be required of the credential holder for this transaction.

(Emphasis added.)²

Stevens’s argument essentially challenges the validity of former WAC 246-826-990(2). But Stevens did not challenge the validity of the rule below. And he does not argue on appeal that the rule is invalid or even mention the rule in his briefs. We generally do not consider arguments raised for the first time on appeal. RAP 2.5(a); *Samra v. Singh*, 15 Wn. App. 2d 823, 838, 479 P.3d 713 (2020). In addition, we generally decline to consider an issue when the

² WAC 246-826-990 was repealed in 2022.

appellant has failed to provide meaningful argument. *Billings v. Town of Steilacoom*, 2 Wn. App. 2d 1, 21, 408 P.3d 1123 (2017). Therefore, we decline to address this argument.

Second, Stevens argues that he did not activate the MAP certificate because he did not pay the initial certification fee in person or via mail. He relies on WAC 246-08-560(2), which states, “Fee payments may be made in person or by mail. Payment shall be by check, draft or money order made payable to the department of health.” Stevens emphasizes that his wife paid the certification fee online with a credit card. However, there is no question that DOH accepted the credit card payment and renewed the certification. Stevens provides no authority to support the proposition that payment of certification fees online with a credit card somehow invalidates the certification. Therefore, we reject this argument.

Third, Stevens argues that the MAP certification became ineffective when he requested a refund of the certification fee. He argues that the State should have immediately refunded the fee and invalidated the license. He points to WAC 246-08-560(6), which states that “[t]he department . . . shall refund fees . . . paid erroneously.” Br. of Appellant at 12-14. However, there is no indication that Stevens paid the certification fee erroneously. And he provides no authority to support the proposition that health care certifications become invalid upon the request for a refund of an application fee. Therefore, we reject this argument.

Accordingly, we hold that DOH did not err in finding that it had authority to take disciplinary action against Stevens’s MAP certification under the UDA, and we affirm the HLJ’s order suspending indefinitely Stevens’s MAP certification.

CONCLUSION

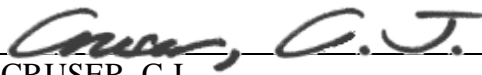
We affirm the adjudicative order suspending indefinitely Stevens’s MAP certification.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.




MAXA, J.

We concur:



CRUSER, C.J.



PRICE, J.