

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1249 Disciplinary Docket No. 3
Petitioner :
 : No. 36 DB 2007
v. :
 : Attorney Registration No. 85099
WILLIAM DAVID ASSAD, :
Respondent : (Fayette County)

ORDER

PER CURIAM:

AND NOW, this 18th day of June, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board dated February 21, 2008, it is hereby

ORDERED that William David Assad is suspended from the Bar of this Commonwealth for a period of one year and one day retroactive to June 20, 2007, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola

As of: June 18, 2008

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1249 Disciplinary Docket
Petitioner	:	No. 3
	:	
v.	:	No. 36 DB 2007
	:	
WILLIAM DAVID ASSAD	:	Attorney Registration No. 85099
	:	
Respondent	:	(Fayette County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On July 17, 2007, Office of Disciplinary Counsel filed a Petition for Discipline against William David Assad, Respondent. The Petition charged Respondent with professional misconduct arising out of his criminal conviction for the offense of obtaining or acquiring possession of a Schedule II controlled substance, Hydrocodone, by misrepresentation, fraud, forgery, deception or

subterfuge. Respondent did not file an Answer to Petition for Discipline.

A disciplinary hearing was held on October 10, 2007, before a District IV Hearing Committee comprised of Chair Charles J. Avalli, Esquire, and Members Mark Gordon, Esquire, and William P. Bresnahan, Esquire. Respondent did not appear.

The Hearing Committee filed a Report on January 2, 2008, finding that Respondent committed professional misconduct and recommending that he be suspended for a period of one year and one day.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on January 30, 2008.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, William David Assad, was born in 1971 and was admitted to practice law in Pennsylvania in 2000. His attorney registration mailing address is 123

Union Street, Uniontown PA 15401. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior history of discipline.

4. On September 8, 2006, Respondent entered a plea of guilty in the Court of Common Pleas of Fayette County to the offense of obtaining or acquiring possession of a Schedule II controlled substance, Hydrocodone, by a misrepresentation, fraud, forgery, deception or subterfuge, which constituted a violation of Title 35 P.S. § 780-113(a)(12).

5. A person who violates such Title with respect to a controlled substance classified in Schedule II is guilty of a felony and has committed a "serious crime" as defined by Rule 214(i), Pa.R.D.E.

6. On September 8, 2006, Respondent was sentenced to undergo a term of intermediate punishment for a period of twelve months, six months of which were to be served on house arrest with electronic monitoring, or a period of in-patient treatment, the duration of which was to be determined by the treating facility.

7. Respondent did not report his conviction to the Secretary of the Disciplinary Board until March 5, 2007, more than 20 days after he was sentenced.

8. On April 30, 2007, the Supreme Court of Pennsylvania issued a Rule to Show Cause pursuant to Rule 214(d)(1), Pa.R.D.E., directing Respondent to show cause why he should not be placed on temporary suspension.

9. Respondent did not file a response to the Rule to Show Cause.

10. On June 20, 2007, the Supreme Court of Pennsylvania ordered the temporary suspension of Respondent and referred the matter to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E.

11. A Petition for Discipline was filed against Respondent on July 17, 2007. Respondent was personally served with the Petition for Discipline.

12. Respondent received notice of the pre-hearing conference scheduled for September 5, 2007 and the disciplinary hearing scheduled for October 10, 2007.

13. Respondent did not appear at the pre-hearing conference on September 5, 2007. He left a voice mail message for Disciplinary Counsel William Friedman on September 4 indicating his intent to not appear.

14. On October 3, 2007, Respondent issued a letter directed to the Disciplinary Board. Therein, he acknowledged the October 10, 2007 hearing date and confirmed that he would not attend the hearing and would accept whatever punishment was deemed appropriate.

15. The October 3 letter also contained a statement that Respondent took full responsibility for his actions and understood the gravity of the situation. He further stated that after consulting with his doctor, he believed it was in his best interests not to take part in the hearing.

16. In the October 3 letter Respondent referred to his treatment for several mental disorders.

17. Respondent did not appear at the disciplinary hearing on October 10, 2007.

18. On October 12, 2007, following the disciplinary hearing, Disciplinary Counsel prepared a letter directed to Respondent, at the request of the Hearing Committee. The letter stated that if Respondent desired, he could provide to Petitioner evidence that medically established his inability to participate in the proceedings and a statement addressing any impairment.

19. Respondent was personally served on October 15, 2007, with the letter and the transcript from the hearing.

20. Respondent has not communicated with Petitioner nor has he submitted evidence of the type requested by the Hearing Committee.

21. Respondent was transferred to inactive status in December of 2005.

22. Respondent's letter of October 3, 2007, to Disciplinary Counsel indicates that he has not practiced law since April of 2005.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. Pa.R.D.E. 203(b)(1) – Conviction of a crime, which under Enforcement Rule 214 (relating to attorneys convicted of crime), may result in suspension.

2. Pa.R.D.E. 214(a) – An attorney convicted of a serious crime shall report the fact of such conviction to the Secretary of the Board within 20 days after the date of sentencing.

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with professional misconduct arising out of his criminal conviction for obtaining or acquiring possession of a Schedule II controlled substance by a misrepresentation, fraud, forgery, deception or subterfuge. In essence, Respondent obtained prescription drugs from a health care provider, took the prescription that he was given and scanned it into his own computer, and wrote his own prescriptions thereafter. In matters relating to criminal conviction, the degree of discipline is the sole issue before the Board. Office of Disciplinary Counsel v. Eilberg, 441 A.2d 1193 (Pa. 1982). Consideration may be given to aggravating and mitigating factors. Office of Disciplinary Counsel v. Valentino, 730 A.2d 479 (Pa. 1999).

The Board and the Court have considered drug conviction cases in the past. In the matter of Office of Disciplinary Counsel v. McKeon, 23 & 122 DB 2005, 1001 & 1053 Disciplinary Docket No. 3 (Pa. Jan. 5, 2006), the attorney was convicted of driving under the influence and possession of cocaine. The attorney was suspended for three months followed by a two year probation period. In the matter of Office of Disciplinary Counsel v.

Reed James Davis, 76 DB 2005, 1004 Disciplinary Docket No. 3 (Pa. Jan. 18, 2007), the respondent was convicted of three counts each of delivery of a controlled substance, possession with intent to deliver a controlled substance, and possession of a controlled substance. The respondent demonstrated that he was addicted to cocaine and met the Braun standard for mitigation. The Court suspended the respondent for one year and one day retroactive to his temporary suspension.

Respondent chose not to participate in the case against him and did not appear at his disciplinary hearing. In many cases a failure to appear for the disciplinary hearing is viewed as an aggravating factor showing an arrogant disrespect for the disciplinary process. Herein, the Board does not find that Respondent acted in a rude fashion or in any way challenged the authority of the Board or Court. Respondent informed the Hearing Committee and Office of Disciplinary Counsel by letter that he would not defend himself and would not be participating, on the advice of his doctor. He further stated that he understood the gravity of the situation and would accept whatever punishment was deemed appropriate. Before closing the record, the Committee allowed Respondent the opportunity to show any medical reason for disability, but Respondent chose not to respond. The Committee recommended a one year and one day suspension.

The facts of this case support a one year and one day period of suspension, retroactive to the date of the temporary suspension. Respondent was convicted of a serious crime. He did not participate in his disciplinary matters and alluded to medical reasons for his decision. Suspending Respondent for more than one year will require him

to petition for reinstatement and demonstrate to a high degree that he is competent and qualified to practice law. The protection of the public is paramount and will not be served with less than a one year and one day suspension.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, William David Assad, be suspended from the practice of law for a period of one year and one day retroactive to June 20, 2007

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Donald E. Wright, Jr., Board Member

Date: February 21, 2008

Board Member Jefferies did not participate in the adjudication.