

[J-172-2004]
IN THE SUPREME COURT OF PENNSYLVANIA

CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 914 DD3
	:	
Petitioner	:	
	:	Disciplinary Board No. 46 DB 2001
	:	
v.	:	
	:	Attorney Registration No. 76042
	:	(Philadelphia)
AKIM FREDERIC CZMUS,	:	
	:	
Respondent	:	
	:	
	:	ARGUED: October 19, 2004

CONCURRING AND DISSENTING OPINION

MADAME JUSTICE NEWMAN

DECIDED: DECEMBER 30, 2005

I agree with the Majority that this Court should order the disbarment of Respondent. I further agree with the reasoning of the Majority in support of this decision. However, I respectfully dissent from the portion of the Opinion that declines to follow the recommendation of the Disciplinary Board to revoke the license of Respondent to practice law.

It is within the inherent and exclusive power of this Court to govern the conduct of attorneys. Commonwealth v. Stern, 701 A.2d 568 (Pa. 1997); Wajert v. State Ethics Comm'n, 420 A.2d 439 (Pa. 1980). I believe that revoking the license of Respondent is an

appropriate exercise of such power given the egregiousness of the fraud perpetrated by Respondent on the Board of Law Examiners. The Disciplinary Board made the following relevant findings of fact:

3. On April 9, 1995, Respondent signed and subsequently submitted to the Pennsylvania Board of Law Examiners an Application for Admission to the Bar of the Commonwealth of Pennsylvania, therein applying to sit for the July 1995 bar examination.

4. Respondent executed a verification to the statements in the Bar Application as follows: "I verify that the statements of facts made by me in this application are true and correct and that they are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities. I further verify that I have not omitted any facts or matters pertinent to this application."

5. In response to various questions in the Bar Application, Respondent made materially false and misleading statements and intentionally omitted material information.

6. Respondent attended Brown University School of Medicine from 1974 to 1977 and was conferred a Degree in Medicine on June 6, 1977.

7. Respondent completed a medical residency in internal medicine in 1978 at Thomas Jefferson University in Philadelphia.

8. On November 3, 1978, the New York State Education Department authorized Respondent to engage in the practice of medicine in the State of New York by issuing him a license.

9. Respondent completed a residency in ophthalmology surgery in 1981 at the State University of New York at Downstate Medical Center, Brooklyn, New York.

10 From 1981 to 1984, Respondent engaged in the private practice of medicine in New York City and served as Assistant Clinical Professor of Ophthalmology at New York Medical

College, St. Vincent's Hospital and Medical Center and the New York Eye and Ear Infirmary.

11. Respondent resided in California on and after April 9, 1985 to in or about March 1992.

12. On August 13, 1984, the California Medical Board issued to Respondent a physician and surgeon certificate number.

13. Respondent was not certified by the American Board of Ophthalmology. He had taken the examination for Board certification but did not pass it.

14. On August 1, 1985, Respondent submitted an application for appointment to the medical staff of Verdugo Hills Hospital in Glendale, California, which falsely represented that he was certified by the American Board of Ophthalmology and included a false certificate in support of the misrepresentation.

15. On September 18, 1985, Respondent filed a similar false application and certificate in connection with an application for appointment to the medical staff of Glendale Adventist Medical Center in Glendale, California.

16. In or about October 1986, the Attorney General of the State of California commenced a disciplinary action against Respondent as a result of the false certificates referenced above. Respondent was charged with violating California Business and Professions Code § 2261, which provides that it is unprofessional conduct to knowingly make or sign any certificate or other document directly or indirectly related to the practice of medicine or which falsely represents the existence or non-existence of a state of facts.

17. On August 19, 1987 Respondent endorsed a Stipulation in Settlement admitting the allegations for the purposes of that proceeding and agreeing that his license would be revoked, with the revocation stayed for a period of five years and that he would be placed on probation with conditions.

18. By Statement of Charges dated July 11, 1988, New York State Department of Health, State Board of Professional

Medical Conduct initiated a reciprocal discipline proceeding based on the stayed revocation and probation in California.

19. Although Respondent contested the imposition of reciprocal discipline, New York State found that Respondent's knowing conduct violated New York law and suspended Respondent's license to practice as a physician for five years, the execution of the last four years to be stayed, and Respondent be placed on probation with conditions.

20. In September 1991, the California Board filed against Respondent an Accusation and Petition to Revoke Probation, alleging that in 1987 and 1988, Respondent engaged in gross neglect in the treatment of six patients and knowingly made false documents in the nature of inaccurate surgical and treatment records.

21. On May 18, 1992, Respondent executed a Stipulation for Surrender of Certificate, wherein he agreed to surrender his license.

22. Thereafter New York State filed a Statement of Charges requesting reciprocal discipline based on the California proceeding.

23. In June 1993, New York State revoked Respondent's license to practice medicine in New York.

24. In August 1992, Respondent entered Temple University School of Law.

25. During law school, Respondent was employed by a law firm that handled a large number of medical malpractice cases. Respondent's resume at that time stated that he held medical licenses in California and New York. Respondent failed to disclose to the law firm that he had surrendered both medical licenses.

26. As found above, in April 1995, Respondent submitted an application to take the Pennsylvania bar examination. In response to Question 5 of the Application which requires the applicant to list all schools attended above high school including the dates of attendance, the degree received and the

date conferred, Respondent omitted from his response his attendance at and degree received at Brown University School of Medicine, his attendance at Thomas Jefferson University, and his attendance at Downstate Medical Center in New York.

27. In response to Question 7 of the Bar Application relating to residences outside of Pennsylvania within the last ten years, Respondent answered that he resided at 1120 S. Dolton Ct., Wilmington, Delaware, from June 1984 to April 1995, when in fact he resided in California from 1985 to about March 1992.

28. In response to Question 13 of the Application which asks the applicant if he ever altered or falsified any official document or copy thereof referring to his professional qualifications, Respondent answered “No” when in fact he admitted to the Medical Board in California in 1987 that he had filed two applications that falsely represented he was “Board Certified” and included a false certificate in support of the misrepresentation.

29. Respondent failed to follow the directive following Questions 13-16 that requires an applicant who falsified any official document to send all related documentation along with the Bar Application. Respondent failed to send any documents relating to disciplinary actions in California and New York.

30. In response to Question 17 of the Bar Application which asks if the applicant has “ever, as a member of any profession or organization or the holder of any office or license, been the subject of any proceeding or inquiry which involved censure, removal, suspension, revocation of license, or discipline”, Respondent omitted the disciplinary actions in California and New York.

31. In response to Question 18(a) of the Bar Application relating to applying for a permit or license that required proof of good character, Respondent omitted that he applied for medical licenses in California and New York and the dates of those applications.

32. In response to Question 20 of the Bar Application relating to relevant employment information during the last seven years, Respondent omitted his employment as a

medical professional in California from April 9, 1988 to 1992, misrepresented that he had been employed by: Kennard Lab Associates, 28 Lawson Avenue, Claymont, Delaware 19703 as a Lab Director from September 1984 to January 1992, and fabricated the existence of Kennard Lab Associates, which was never licensed to do business in Delaware and never operated at the address provided.

Report and Recommendations of the Disciplinary Board, March 8, 2004 at 3 - 8.

In light of the falsehoods and material omissions that riddled Respondent's application to sit for the bar examination, it is patently obvious that the Board of Law Examiners did not have a full and fair opportunity to determine whether he should have been admitted as an attorney in the first instance. Simply to disbar Respondent without revoking his license rewards him for having lied successfully because a petition for reinstatement will not require him to submit a new application for admission to the Board of Law Examiners and take another bar examination. Only by requiring Respondent to begin the admissions process *ab initio* can we be assured that he has the requisite fitness and character to be a member of the bar.

Accordingly, while I agree with the Majority to disbar Respondent, I dissent from the portion of its Opinion that rejects the recommendation of the Disciplinary Board to revoke the license of Respondent.

Messrs. Justice Castille and Baer join this concurring and dissenting opinion.