

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 176, Disciplinary Docket
Petitioner	:	No. 3 - Supreme Court
	:	
v.	:	No. 22 DB 1996 - Disciplinary Board
	:	
[ANONYMOUS],	:	Attorney Registration No. []
	:	
Respondent	:	([])

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

Respondent, [], pleaded guilty on June 27, 1995 to one count of mail fraud in violation of 18 U.S.C. '1341. Respondent was placed on temporary suspension by Order of the Supreme Court of Pennsylvania dated February 26, 1996. Pursuant to that Order and in conformity with Rule 214(f)(1), Pa.R.D.E., this matter was referred to the Disciplinary Board.

On March 18, 1996, a Petition for Discipline was filed against Respondent by Office of Disciplinary Counsel. Respondent filed an Answer on April 19, 1996. A hearing was held on July 23, 1996 before Hearing Committee [] comprised of Chair [], Esquire, and Members [], Esquire, and [], Esquire. Respondent represented himself at the hearing. Petitioner was represented by [], Esquire.

The Committee filed a Report on March 26, 1997 and recommended a two year suspension. No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting held on May 1, 1997.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is now located at Suite 3710, One Oxford Centre, Pittsburgh, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), with the power and the 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 was born on September 27, 1957 and was admitted to practice law in Pennsylvania on November 20, 1985. Respondent's last registered address for the practice of law was []. Respondent's home mailing address is []. Respondent is married with two children.

3. On June 26, 1995 Respondent was convicted in the United States District Court for the [] District of Pennsylvania of one count of mail fraud in violation of 18 U.S.C. '1341.

4. Respondent was sentenced to a period of probation for three years, 500 hours of community service, and a fine of \$5,000.00.

5. The facts underlying Respondent's criminal conviction are as follows:

a) From on or about May 1989 to May 1990, Respondent, together with Dr. [A], used the United States mail to knowingly devise and participate in a scheme to defraud [B] Insurance Company.

b) The scheme consisted of submitting false and fraudulent medical reports and bills showing medical treatment rendered by Dr. [A] to Respondent (as a result of a May 1989 car accident) to [B] for the purpose of inflating Respondent's insurance claim.

c) As a result of this scheme, [B] issued a check for \$6,500.00 to settle Respondent's claim.

6. As a result of this conviction, Respondent was placed on temporary suspension from the practice of law by Order of the Supreme Court dated February 26, 1996.

7. Respondent was suspended from the practice of law for two years in New Jersey.

8. Respondent has no prior record of discipline.

9. Respondent is presently employed by [C] Company as a managing director primarily involved in financing apartment complexes.

10. Two character witnesses testified on Respondent's behalf at the hearing. [D] testified that he has known Respondent for approximately sixteen years and believes Respondent is a person of integrity. He would not hesitate to refer clients to Respondent. [E] is an attorney who has known Respondent for approximately sixteen years and has always found Respondent to be an attorney who cared about his clients and treated them ethically and professionally.

11. Respondent expressed his remorse and testified that he will always be sorry for his major error in judgment. He tried to make amends by cooperating with the government and pleading guilty. He is currently fulfilling his community service sentence by working at a thrift shop at [F] Hospital.

III. CONCLUSIONS OF LAW

Respondent's conviction constitutes a per se ground for discipline pursuant to Rule 203(b)(1), Pa.R.D.E.

IV. DISCUSSION

Rule 203(b)(1) of the Pennsylvania Rules of Disciplinary Enforcement provides that conviction of a serious crime shall be grounds for discipline. The sole issue before the Board in the case at bar is the extent of discipline to be imposed. Office of Disciplinary Counsel v. Costigan, 526 Pa. 16, 584 A.2d 296 (1990). In criminal conviction cases, the Board's inquiry must focus on whether Respondent's character, as evidenced by his conduct, makes him unfit to practice law from the standpoint of protecting the public and the court system. Office of Disciplinary Counsel v. Casety, 511 PA 177, 512 A.2d 607 (1986). In order to properly assess Respondent's character, the Board must examine the circumstances of the criminal conduct.

Respondent participated in a scheme with Dr. [A] during the time frame May 1989 to May 1990 whereby false medical reports and bills evidencing medical treatment were submitted to [B] Insurance Company. The purpose of the scheme was to inflate the insurance claim and receive more money from [B] than was warranted by the actual injuries and treatments. Respondent was involved in a car accident in May 1989. He saw a practitioner named Dr. [G] in [] who

recommended a course of treatment, but Respondent never went back. An acquaintance who subsequently became Respondent's partner, [H], suggested instead that he go to Dr. [A]. Several days later he went to see Dr. [A], who examined him and said he needed treatment. Again, Respondent never went back, but several months later a package of bills showed up at his office referencing numerous treatments that he had with Dr. [A]. Respondent left the packet on his desk until September, when he decided to submit them to his insurance company. Respondent classified this decision as his "major error of judgment". Respondent subsequently received \$6,500.00 from [B]. He testified that at no time did he attempt to contact Dr. [A] concerning the incorrect bills. The packet arrived at Respondent's office, and he accepted it and sent it to the insurance company even though he knew the bills reflected inflated hours of treatment. When the government investigation targeted Respondent, he decided that his best course of action was to acknowledge guilt. Respondent testified that since the incident happened in 1989 he has never been involved in any type of misconduct nor will he be again.

Respondent is presently employed by [C] Company as a managing director. He is involved in financing multi-unit apartment complexes. Respondent is serving his probation, which will be complete in October 1998. In order to fulfill the terms of his probation, Respondent volunteers time to the [F] Hospital thrift shop, which uses funds to support specific community programs. He has served approximately 150 hours of his 500 hour commitment. Respondent testified that he is trying to rebuild his life, although the pain he caused his family is still present. Character witnesses for Respondent testified in their opinion that Respondent's misconduct was an aberration. Respondent is known to these people as an intelligent, caring professional.

Respondent's misconduct raises serious questions as to his character and fitness to practice law. It is unacceptable for an attorney to knowingly submit documents to an insurance company that he knows are fraudulent. It is of no consequence that Respondent's misconduct involved himself, and not a client. His failure to recognize the egregiousness of his actions and their future impact demonstrates a severe lapse of ethical judgment. Respondent acknowledged that the packet of fraudulent bills and medical records remained on his desk for a month before he decided to submit them to [B]. Although Respondent did not explain his ultimate reason for submitting the packet, it is clear that he had an opportunity to contact Dr. [A] and amend the inaccuracies, but he chose not to do so. Attorneys are called upon each day to exercise decision making within the ethical confines of the profession as they pursue cases. Respondent's actions evidence an inability to work within these confines.

The Board's responsibility in this matter is to recommend an appropriate sanction in light of the facts of the case. Prior case law supports the imposition of a three year suspension. In the case of In re Anonymous No. 121 DB 88, 14 Pa. D. & C. 4th 246 (1991), an attorney pleaded guilty to obstruction of justice arising from his assistance in filing fraudulent medical claims. The attorney was suspended for two years and three months. In the case of In re Anonymous No. 20 DB 81, 35 Pa. D. & C. 3d 202 (1985), an attorney was convicted of thirteen counts of mail fraud and one count of conspiracy stemming from his involvement in persuading doctors to submit false claims to insurance companies to effect larger settlements for personal injury clients. The attorney received a four year suspension. While this case is factually similar to the instant case, Respondent's misconduct herein is less egregious as he was convicted of one count of mail fraud and did not involve any clients in his fraud.

The record evidences that Respondent is sincerely remorseful and has held himself entirely accountable for his misconduct. He is adhering to the terms of his probation and is seeking to rebuild his life. He has no prior record of discipline. Based on the totality of facts in this case, the Board recommends a three year suspension retroactive to the date of Respondent's temporary suspension.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], be suspended from the practice of law for a period of three (3) years, retroactive to February 26, 1996.

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: _____
Duke George, Jr., Member

Date: June 10, 1997

Board Member Miller recused himself.

Board Member Nix dissented and would recommend a two (2) year suspension.

Board Member Aronchick did not participate in the May 1, 1997 adjudication.

ORDER

PER CURIAM:

AND NOW, this 29th day of July, 1997, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 10, 1997, it is hereby

ORDERED that [RESPONDENT] be and he is SUSPENDED from the Bar of this Commonwealth for a period of three (3) years, retroactive to February 26, 1996, 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.