

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-057

IN THE MATTER OF
ROGER C. PETERMAN
AN ATTORNEY AT LAW

Decision

Argued: April 18, 2002

Decided: May 20, 2002

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Lewis P. Sengstacke appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us based on a motion for final discipline filed by the Office of Attorney Ethics (“OAE”), based on respondent’s guilty plea to one count of obtaining a controlled dangerous substance by fraud, in violation of *N.J.S.A. 2C:35-13*, a third degree crime.

Respondent was admitted to the New Jersey bar in 1993. He was temporarily suspended by the Court on December 5, 2001, following his guilty plea. *In re Peterman*, 170 N.J. 185 (2001). That suspension continues to date. Although respondent has no New Jersey disciplinary history, his admission to the New Jersey bar was not without difficulty. In 1985 he was disbarred in Pennsylvania, following a conviction of two counts of failure to make required disposition of funds received. In 1980 when he committed the offense, respondent was addicted to heroin. He purchased drugs with funds that had been entrusted to him for the payment of his client's medical bills. Respondent was reinstated in Pennsylvania in 1991. After he passed the New Jersey bar examination in 1992, the New Jersey Supreme Court Committee on Character certified his fitness to practice law. The Court affirmed the committee's decision, finding that it was not clear that "a knowing misuse of non-client funds in 1980 would have invariably warranted disbarment." *Application of Peterman*, 139 N.J. 201, 209 (1993). Two members of the Court dissented, finding that respondent had been guilty of knowing misappropriation and that *In re Wilson* 81 N.J. 451 (1979) precluded his admission to the New Jersey bar.

An accounting of respondent's history of drug abuse is necessary for a thorough review of this matter. The Court described respondent's past use of drugs and his rehabilitation, as follows:

A regrettable victim of drug use since his college days, Peterman was involved in a severe car accident shortly after he entered Rutgers Law School, resulting in extensive burns and fractures and treatment with morphine and other pain-killing drugs. He remained dependent on

drugs throughout law school and the early years of practice. . . . He has since demonstrated recovery by attendance at Alcoholics Anonymous, Narcotics Anonymous, and Lawyers Concerned With Lawyers. He has successfully turned his life around with a new marriage and with steady employment in the public sector as a youth-services worker. He has long since made restitution to Dr. Kaplan. He has, as well, been involved in school-board activities, and in 1992 was appointed to the Drug and Alcohol Abuse Committee of the New Jersey State Bar Association.

[*Application of Peterson*, 134 N.J. 201, 206 (1993)]

Respondent remained free of drugs from 1984 until 1998, when he contracted the so-called "flesh-eating virus." His doctor prescribed the drug Oxicontin to control his pain. Respondent became addicted to Oxicontin. When he was no longer able to obtain the drug by lawful means, he resorted to forging a prescription. On September 10, 2001 he pled guilty to one count of obtaining a controlled dangerous substance by fraud, in violation of *N.J.S.A. 2C:35-13*. On November 16, 2001 respondent was sentenced to probation for a period of one year with the following conditions: (1) he must submit to random drug and alcohol testing; (2) he must maintain gainful employment; (3) he must receive aftercare counseling; and (4) he must attend Alcoholics Anonymous and Narcotics Anonymous meetings. Before he was sentenced, respondent had completed a twenty-two day inpatient program at a drug and alcohol treatment facility.

At the sentencing hearing, four attorneys appeared in respondent's behalf, testifying about his substantial contributions to programs that assist attorneys with drug or alcohol problems. In addition, respondent founded a local chapter of the group Lawyers Concerned for Lawyers.

The OAE urged us to impose a one-year suspension, retroactive to December 5, 2001, the date of respondent's temporary suspension. Respondent contended that a retroactive suspension of less than one year was adequate.

* * *

Following a review of the full record, we determined to grant the OAE's motion for final discipline.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. *R.1:20-13(c)(1); In re Gipson*, 103 *N.J.* 75, 77 (1986). Respondent's guilty plea to one count of obtaining a controlled dangerous substance by fraud constituted a violation of *RPC* 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer) and of *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Only the quantum of discipline to be imposed remains at issue. *R. 1:20-13(c)(2); In re Lunetta*, 118 *N.J.* 443, 445 (1989).

The level of discipline imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." *In re Lunetta, supra*, 118 *N.J.* at 445-46. Discipline is imposed even though an attorney's offense was not related to the practice of law. *In re Kinnear*, 105 *N.J.* 391 (1987).

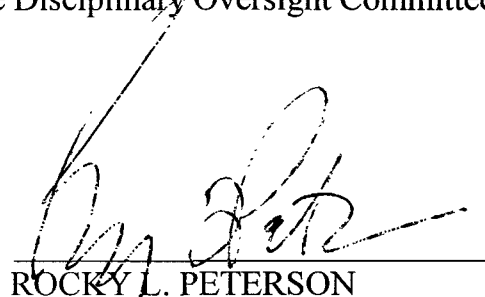
Attorneys who have committed similar crimes have received suspensions. In *In re Adubato*, 106 N.J. 655 (1987), the attorney suffered from migraine headaches. He became addicted to prescription painkillers prescribed by his physician. When Adubato could no longer obtain the drug by lawful means, he resorted to misrepresentation and fraud. He was suspended for six months. His criminal misconduct was limited to one instance of attempting to obtain a prescription by fraud. In *In re Hasbrouck*, 140 N.J. 162 (1995), the attorney became addicted to a prescription painkiller initially prescribed for her by her father, a physician, for her migraine headaches. She then began forging prescriptions on sheets taken from her father's prescription pad. After her father retired from his medical practice, she used his prescription pads to forge prescriptions for herself, using the names of her husband and sister. Unlike Adubato, she engaged in this fraudulent conduct numerous times over a period of years. Hasbrouck was suspended for one year.

Here, we recognize that, although serious, respondent's criminal misconduct was limited to obtaining Oxicontin illegally on only one occasion. We are also mindful that, having been admitted in New Jersey after his disbarment in Pennsylvania, respondent should have conducted himself with more circumspection and awareness of the standards governing all attorneys. In mitigation, we considered the substantial service that he has contributed to the bar, including his activities with Lawyers Concerned for Lawyers and other organizations.

In our view, although respondent was previously disciplined in Pennsylvania, because he was guilty of only one instance of criminal misconduct, as was Adubato, and because of the substantial mitigation present in this case, a six-month suspension is sufficient. We, thus, unanimously voted to suspend respondent for six months, retroactive to the date of his temporary suspension, December 5, 2001. Respondent must also submit to random drug testing, supervised by the OAE, for a period of one year, beginning upon the termination of the one-year probationary period to which he was sentenced.

We further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

By:



ROCKY L. PETERSON

Chair

Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Roger C. Peterman
Docket No. DRB 02-057

Argued: April 18, 2002

Decided: May 20, 2002

Disposition: Six-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Six-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>		X					
<i>Maudsley</i>		X					
<i>Boylan</i>		X					
<i>Brody</i>		X					
<i>Lolla</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>		X					
<i>Wissinger</i>		X					
Total:		9					

Robyn M. Hill 5/29/02
Robyn M. Hill
Chief Counsel