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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 94-159

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IN THE MATTER OF :  
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RICHARD P. CONSOLE, :  
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:   
AN ATTORNEY AT LAW :  
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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: July 20, 1994

Decided: October 29, 1994

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

Respondent did not appear, despite proper notice of the hearing.

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

This matter was heard by the Board on July 20, 1994, on a Motion for Final Discipline filed by the Office of Attorney Ethics (OAE) based on respondent's conviction in federal court, on May 21, 1992, of violations of federal mail fraud, under 18 U.S.C.A. 1341, and conspiracy and racketeering, under the Racketeer Influence and Corrupt Organization Act (RICO) 18 U.S.C.A. 1962.

The OAE urged the Board to recommend disbarment. The Board unanimously so recommends.

Respondent was admitted to the New Jersey bar in 1965 and practiced in Berlin, Camden County, New Jersey. He has been on temporary suspension since May 27, 1992. He is serving a fifteen-year prison term in Pennsylvania.

The federal complaint filed in 1990 charged respondent, another attorney, an osteopathic surgeon and three staff members with conducting an enterprise to submit falsified reports to over twenty insurance companies in order to obtain over sixty checks, between 1977 and 1990. The scheme typically involved falsifying patient records to increase substantially the number of doctor visits. The doctor was the treating physician for about 600 of the law firm's cases, ten percent of the firm's total caseload. Respondent and his partner were found guilty of mail fraud and RICO charges by a jury and sentenced to lengthy prison terms. The judgments of conviction and sentence were affirmed by the United States Court of Appeals for the Third Circuit on December 22, 1993.

#### CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of respondent's guilt. R.1:20-6(c)(1). There is no need to make an independent examination of the underlying facts to ascertain guilt. In re Leahey, 118 N.J. 578 (1990). The only issue to be determined is the extent of final discipline. R.1:20-6(C)(2)(ii). A "serious crime" for disciplinary action includes any federal felony or any crime involving misrepresentation, fraud or deceit. R.1:20-6(b)(2).

Conviction of a serious crime generally warrants disbarment. In re Lunetta, 118 N.J. 443 (1989) (disbarment for "protracted criminal conspiracy" that spanned eight months); In re Zauber, 122

N.J. 87 (1991) (continuing and sophisticated scheme with conviction of RICO conspiracy and kickbacks); In re Messinger, 133 N.J. 173 (1993) (disbarment even when the attorney was not the "mastermind" behind conspiracy and fraudulent securities transactions). But see In re Giordano, 123 N.J. 362 (1991) (suspension for three years, despite use of lawyer skills in a conspiracy, when there was only one incident and no indication that attorney was motivated by greed).

In this matter, we have numerous fraudulent claims filed for over a decade. It is undeniable that respondent should be disbarred. The Board so recommends unanimously. Two members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 10/29/94

By: Elizabeth L. Buff  
Elizabeth L. Buff  
Vice-Chair  
Disciplinary Review Board