

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-027

IN THE MATTER OF :
:
CHARLES S. ADUBATO :
:
AN ATTORNEY AT LAW :
:

Decision

Argued: March 14, 2002

Decided: April 11, 2002

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

Respondent waived appearance for oral argument.

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”), following respondent’s guilty plea to a one-count indictment charging him with obtaining a controlled dangerous substance (Percocet) by fraud, in violation of N.J.S.A. 2C:35-13, a crime of the third degree.

Respondent was admitted to the New Jersey bar in 1980. On November 26, 2001, he was temporarily suspended, pending the final resolution of this matter. He was also

suspended for six months, effective June 17, 1986, based upon a guilty plea to a violation of N.J.S.A. 24:21-22(a)(13), attempting to obtain a controlled dangerous substance (Dilaudid) by fraud. He was restored to practice in March 1989.

In November 2000, respondent telephoned a pharmacy, misrepresented that he was a local physician and requested that the pharmacy fill an "emergency prescription" for Percocet. The pharmacist called the physician's office to confirm the legitimacy of the prescription, but did not receive a return telephone call until after respondent had already obtained the Percocet. According to the pharmacist, he filled the prescription before receiving the return call from the physician because he had previously filled several valid prescriptions for respondent. The pharmacist told the police that he had previously filled for respondent six Percocet prescriptions from four different doctors.

According to the pre-sentence report, respondent made the following statement to the probation officer:

I injured my back in a car accident six years ago and reinjured it at the gym. I have a fractured vertebrae and two herniated discs. I was prescribed percocet [sic] and began abusing the drug to the point that I was getting them from a number of different doctors. Eventually I couldn't get them anymore, no one would prescribe them because they were afraid I would get sick. I woke up one Sunday morning and I was sick, I think I was detoxing and I couldn't handle it. I couldn't get my doctor so I called the pharmacy and represented that I was [the physician] and asked them to fill a prescription for [me]. About a half an hour later I went down and picked up the prescription. Later that day the pharmacy confirmed with [the physician] that he did not make the call. It didn't take long for them to figure it out. It was stupid and illegal. I feel terrible about this, I've just lost everything I have worked thirteen years for.

Respondent admitted to the probation officer that he had a history of substance abuse, beginning with alcohol when he was fifteen years old. According to respondent, he began using marijuana when he was sixteen; unspecified "pills," LSD and speed at twenty; cocaine at eighteen; and heroin at twenty-one. He apparently tried several drug treatment programs. In 1987, he entered an in-patient treatment program and remained "clean" for almost thirteen years. However, when he was forty-nine years old, he was prescribed Percocet for a back injury and became addicted to it.

After respondent's November 2000 arrest, he again entered an in-patient treatment program. At the time of his sentencing, he continued to receive counseling as an out-patient from Jersey Shore Addiction Services, Asbury Park. His counselor advised the probation officer that respondent was complying with his treatment plan and was "doing great."

On September 7, 2001, respondent was sentenced to one year of probation and ordered to continue out-patient drug treatment.

* * *

The OAE urged that us to suspend respondent for one year, retroactive to the date of his temporary suspension. Respondent agreed with the OAE's recommendation.

* * *

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

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction established a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). The sole issue to be determined is the quantum of discipline to be imposed. 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. That respondent's offense does not relate directly to the practice of law does not negate the need for discipline. Even a minor violation of the law tends to lessen public confidence in the legal profession as a whole. In re Addonizio, 95 N.J. 121, 124 (1984).

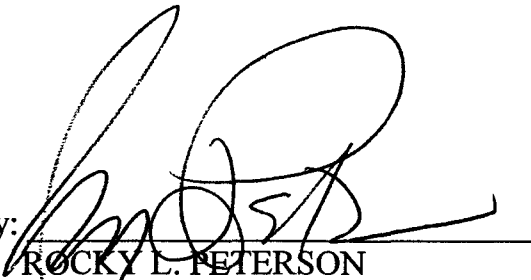
In support of its position that respondent should be suspended for one year, the OAE relied on In re Hasbrouck, 140 N.J. 162 (1995). There, the attorney became addicted to a prescription painkiller initially prescribed for her by her father, a physician, for her migraine headaches. She then began forging 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.

As recognized by the OAE, Hasbrouck's illegal conduct spanned a number of years, while respondent was guilty of only one instance of obtaining a controlled dangerous substance by fraud. However, as also pointed out by the OAE, respondent has a history of discipline for the same type of criminal activity. In 1987, he was suspended for six months, based on his conviction for attempting to obtain another prescription painkiller, Dilaudid, by fraud. His actions in that case were identical to those here. Dilaudid had been prescribed for his migraine headaches. After he could no longer obtain legitimate prescriptions, he telephoned a pharmacy, posing as a physician to prescribe Dilaudid for himself.

In light of respondent's criminal and disciplinary history, we unanimously determined to suspend him for one year, retroactive to the date of his temporary suspension, November 26, 2001. With his petition for reinstatement, respondent is to submit a medical report certifying that he is free of drugs. On reinstatement, respondent is to submit to random drug testing, as approved by the OAE, for a period of one year. Two members did not participate.

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

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

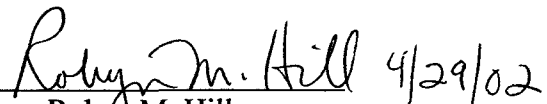
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Charles S. Adubato
Docket No. DRB 02-027

Decided: April 11, 2002

Disposition: one-year suspension

| <i>Members</i> | <i>Disbar</i> | <i>One-year 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: | | 7 | | | | | 2 |


Robyn M. Hill
Chief Counsel