

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-291

IN THE MATTER OF
STEPHEN R. JAFFE
AN ATTORNEY AT LAW

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Decision

Argued: October 19, 2000

Decided: May 29, 2001

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

Carl D. Poplar 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 on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's guilty plea to an accusation charging him with one count of third degree theft by deception, in violation of N.J.S.A. 2C:20-4.

Respondent was admitted to the New Jersey bar in 1987. He has no history of discipline.

The factual basis for the plea was elicited at the plea hearing:

Respondent committed the crime of theft by deception between June 28, 1996 and April 3, 1997. He obtained approximately \$13,100 from Blue Cross Blue Shield of New Jersey, Inc. ("BCBS") by submitting false health insurance claims to that insurance company. Specifically, respondent submitted requests for reimbursement for 175 cases of infant formula from a pharmacy in Voorhees, New Jersey, when he knew he was not entitled to such reimbursement.

According to respondent, his child was very sick and in and out of hospitals for a two-year period. Respondent had to get medicine to help him survive. Respondent submitted claims for reimbursement to which he was not entitled, in the amount of approximately \$13,000. He knew the claims were fraudulent and that he was, therefore, not entitled to reimbursement.

As part of his plea agreement, respondent agreed to execute a consent judgment in the amount of \$10,000 in favor of the New Jersey Department of Banking and Insurance. That amount represented a fine for violating the New Jersey Insurance Fraud Prevention Act. Thereafter, respondent applied for and was accepted into the pretrial intervention ("PTI") program.

More specifically, respondent's wife gave birth to a son in October 1995. The infant developed problems that required a prescribed formula for nourishment, called Neocate. At that time, the formula cost approximately \$100 a case. Between June 1996 and April 1997,

respondent submitted to BCBS claims for 175 cases of Neocate, amounting to \$17,500. When BCBS conducted an investigation, respondent could account for only forty-four Neocate cases. In December 1997, respondent met with investigators from BCBS and settled the matter by refunding to \$15,985 to BCBS, including \$2,885 in administrative fees and \$13,100 for the excessive reimbursement of 131 cases of Neocate.

According to respondent, from the time of birth his child had serious digestion and breathing problems that necessitated several hospitalizations. Finally, the doctors prescribed Neocate, the only nourishment the baby could ingest. The baby outgrew his medical condition at the age of two and one-half.

Respondent's counsel stated that, once respondent was confronted by the BCBS investigator, he accepted full responsibility for his conduct, made full restitution and signed a voluntary statement acknowledging his error. Respondent's counsel acknowledged that respondent used poor judgment, but argued, in mitigation, that the conduct did not occur in a professional capacity and that respondent has no disciplinary history.

Counsel urged the imposition of either an admonition or a reprimand; adding that respondent's aberrational conduct occurred during a time of enormous personal, physical and emotional stress for respondent and his family. Counsel distinguished respondent's conduct from that displayed in the following cases which counsel viewed as more egregious: In re Hoerst, 135 N.J. 98 (1994) (six-month suspension for a county prosecutor who misused public funds to pay for himself and a female companion to attend a trip); In re Leahey, 118

N.J. 578 (1990) and In re Chester, 117 N.J. 360 (1990) (attorneys suspended for six months following convictions for failure to file income tax returns); In re Peia, 111 N.J. 318 (1988) (nine-month suspension for attorney convicted of possession of cocaine).

The OAE agreed with respondent's counsel that the mitigating circumstances in this matter should result in more lenient discipline than that imposed on other attorneys who were guilty of insurance fraud. See, e.g., In re DeSantis, 147 N.J. 589 (1997) (two-year suspension); In re Sloane, 147 N.J. 279 (1997) (two-year suspension); and In re Kerrigan, 146 N.J. 557 (1996) (eighteen-month suspension). The OAE pointed out, however, that, over a nine-month period, respondent sought reimbursement totaling \$17,500 from BCBS, when he was entitled to \$4,400 only. The OAE urged the imposition of a six-month suspension.

* * *

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

The existence of a criminal conviction is conclusive evidence of respondent's guilt.¹ R.1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Only the quantum of discipline imposed remains at issue. R.1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

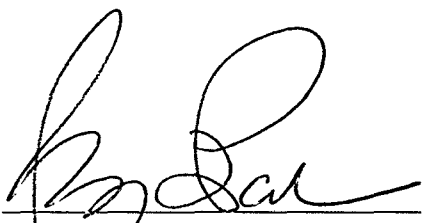
¹ Because respondent was admitted into PTI, there was no criminal conviction. However, R.1:20-13(c)(2) permits the filing of a motion for final discipline based on either a criminal conviction or an admission of guilt that leads to admission into a diversionary program.

The purpose of discipline is to protect the public from attorneys who do not meet the standard of responsibility of their profession. In re Barbour, 109 N.J. 143, 161 (1988). Whenever an attorney commits a crime, he or she violates his or her professional duty to uphold and honor the law. In re Bricker, 90 N.J. 6, 11 (1982).

In determining the appropriate discipline to impose, we have considered that respondent's misconduct occurred during a very emotional and difficult time of his life. His infant child was experiencing life-threatening medical problems that required the use of a special formula. Respondent pleaded guilty to theft by deception, was admitted into PTI, accepted responsibility for his actions, made restitution to BCBS in 1997 and paid a \$10,000 civil penalty. We have given great weight to the mitigating circumstances in this matter and have unanimously determined to impose a three-month suspension for respondent's transgressions. One member did not participate.

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

Dated: May 29, 2001

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Stephen R. Jaffee
Docket No. DRB 00-291**

Decided: May 29, 2001

Disposition: three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Peterson		x					
Boylan							x
Brody		x					
Lolla		x					
Maudsley		x					
O'Shaughnessy		x					
Schwartz		x					
Wissinger		x					
Total:		8					1

By Robyn M. Hill 6/29/01
Robyn M. Hill
Chief Counsel