SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-384

IN THE MATTER OF

AKIM F. CZMUS

AN ATTORNEY AT LAW

Decision

Argued: February 8, 2001

Decided: May 29, 2001

Nitza I. Blasini 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 based on a recommendation for discipline filed by the District VII Ethics Committee ("DEC"). The formal complaint charged respondent with

violations of *RPC* 8.1(a) (false statement of material fact to disciplinary authorities) and *RPC* 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1995. He has no prior disciplinary history.

* * *

The facts in this matter are not in dispute. When respondent applied for admission to the New Jersey bar, he did not disclose that he had obtained a medical degree, had practiced medicine and had been disciplined in two states for professional misconduct, resulting in the surrender of his license to practice medicine. Respondent admitted these misrepresentations and further admitted that he was not truthful during an interview with the Office of Attorney Ethics ("OAE") and in his answer to the formal ethics complaint. The consequences of respondent's omissions are at issue. The OAE urges the revocation of respondent's license to practice law, while respondent's counsel argues that a reprimand is the appropriate form of discipline in this matter.

In 1977 respondent received a doctorate degree in medicine from Brown University. He had received a bachelor's degree from Brown University in 1974. After respondent served a one-year internship at Thomas Jefferson University Hospital in Philadelphia, he

became a resident in ophthalmology at the State University of New York from 1978 through 1981. In 1981 respondent joined the staff of New York Medical College as an assistant professor, where he taught ophthalmology to medical students and residents. In 1984 respondent moved to California, where, on August 13, 1984, he became a licensed physician.

After working at two temporary jobs, respondent obtained a position as an ophthalmologist in Glendale, California, working for Kennard Associates, a business entity that bought and staffed medical practices. Kennard Associates required respondent to obtain privileges at two hospitals.

In August and September 1985, when respondent submitted applications for privileges, he misrepresented that he was board certified. On October 2, 1986, the California Board of Medical Quality Assurance filed a petition to revoke or suspend respondent's medical license, as a result of his misrepresentation. Respondent, who was represented by Ronald Marks, entered into a stipulation whereby, although his medical license was revoked, the revocation was stayed for five years and he was placed on probation with specific terms and conditions. The probationary period was scheduled to expire on December 7, 1992.

On September 18, 1991 the Medical Board of California, Division of Medical Quality, filed a petition to revoke respondent's probation for unprofessional conduct, based on six instances of gross negligence and/or incompetence, two instances of repeated

negligent acts and two instances of maintaining inaccurate or incomplete surgical and treatment records. Respondent's treatment of these patients had occurred in 1987 and 1988. In the most serious of those matters, respondent's patient was rendered blind in both eyes.

In May 1992 respondent entered into a stipulation whereby he (1) waived his right to a hearing on the charges alleged in the petition, (2) agreed to surrender his medical license effective August 26, 1992 and (3) would be eligible to petition for reinstatement two years later. Respondent was again represented by Marks during these proceedings.

The New York Department of Health instituted reciprocal disciplinary proceedings, resulting in the surrender of respondent's New York license as well. In the New York disciplinary proceedings, respondent's attorney submitted a letter indicating that the application for hospital privileges had been erroneously completed by William J. Kennard, Jr., "who Dr. Czmus had hired to do office work." This representation was false; it was Kennard who had hired respondent.

Respondent subsequently claimed that, although he did not want to perform certain "high risk" surgeries, his employer, Kennard, "forced" him to do so. He further contended that the complaints had been filed primarily by members of one family, after a collection agency had attempted to obtain payment of their medical bills. Respondent, thus, implied that the complaints were frivolous and that he was not responsible for the high risk operations that his employer forced him to perform.

On December 4, 1991 respondent applied for admission to Temple University Law School in Philadelphia. Before submitting his application, respondent asked Marks whether his medical disciplinary history would impede his admission to law school or to the bar. Marks replied that he did not believe so. In his law school application, respondent disclosed that he had obtained a medical degree and had been a practicing physician for fourteen years.

On June 1, 1995 respondent applied for the New Jersey bar examination, having graduated from Temple University Law School in May 1995. In the certified statement of candidate, respondent indicated that he had graduated from Brown University in 1974 and from Temple University Law School in 1995. He failed to disclose that he had received a medical degree, had been a licensed physician and had been forced to surrender his medical license as a result of disciplinary proceedings. The Supreme Court Committee on Character's certified statement of candidate contains the following instructions:

> THE CERTIFIED STATEMENT OF CANDIDATE is to provide the Committee on Character with information relevant to your character and fitness to practice law. PROPER COMPLETION OF THE ATTACHED STATEMENT IS A PREREQUISITE TO YOUR ADMISSION TO THE BAR. Candor and truthfulness are significant elements of fitness. You must, therefore, provide the Committee with all available information, however unfavorable, even if you doubt its relevance. Disclosure must be as detailed as possible. Supporting documentation must be included. FAILURE TO DISCLOSE REQUESTED INFORMATION MAY RESULT IN CERTIFICATION BEING WITHHELD.

While respondent was attending law school, he was employed as a law clerk with the law firm of Beasley, Casey & Erbstein in Philadelphia, where he was hired as an associate after his law school graduation. Respondent's area of practice included medical malpractice. In December 1998 respondent joined DiGiacomo and Baffa, a Philadelphia law firm, as an associate. Again, his area of concentration was medical malpractice. When interviewing for both positions, respondent disclosed that he was a medical doctor. According to respondent, because both law firms concentrated on medical malpractice matters, they routinely asked prospective employees whether they had any knowledge or experience in the field of medicine.

On December 18, 1998 this matter was referred to the OAE by the Committee on Character, after one of the committee members happened to read a publication titled "Questionable Doctors," which revealed respondent's medical disciplinary history. After conducting an investigation of respondent's failure to disclose information on his bar application, the OAE sent him a letter on April 6, 1999, advising him of the grievance and scheduling an appointment for him to provide a tape-recorded statement. The interview, conducted by OAE investigator Raymond Kaminski, took place on April 28, 1999. Although respondent was not represented by counsel, his employer, Daniel DiGiacomo, Esq., accompanied him to the interview.

When examined by the presenter, Kaminski testified as follows about his questions to respondent regarding his failure to disclose his medical background on the certified statement of candidate:[1]

> Q. With regard to the question pertaining to education, did you ask Mr. Czmus why he failed to disclose that he had attended medical school?
>
> A. Yes, I did.
>
> Q. What did he say?
>
> A. He said the way that the question was framed, it asked for colleges or universities other than law school attended. He said it did not specifically specify a graduate or a professional degree and therefore, he believed that he answered it correctly because it was his understanding that it was asking for his undergraduate education.
>
> Q. With respect to the question concerning employment, did you ask Mr. Czmus why he failed to disclose that he had worked as a medical doctor?
>
> A. Yes, he said when he reviewed this question of employment on the certified statement, it asks for his past ten years of experience or work related experience, and he said that at that time he did not have his own practice and he had also worked for Kennard Lab Associates, Mr. William Kennard, was his employer at the time. . . .
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> Q. With regard to discipline, did you ask him why he failed to disclose that he had been disciplined as a medical doctor in both California and New York?

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[1] The record does not explain why the transcript of the tape-recorded interview was not admitted as an exhibit.

A. Yes, he said that prior to completing this application, he spoke to Ronald S. Marks who was an attorney in California that represented him in the medical matters that were brought by the California Medical Board, and Mr. Marks had advised him that the matter in California was handled as an administrative hearing and much like an expungement and therefore, he could answer no to the questions because in effect, it did not exist.

Q. With regard to the question concerning licenses, did you ask Mr. Czmus why he failed to disclose that he had been licensed as a physician?

A. . . . He answered no to that because he said even though he had completed the application as a physician over twenty-five years ago[2], it was his understanding and his belief that at that time, it did not ask for the requirement of proof of good character.

[1T24-27][3]

During the OAE interview, respondent further indicated that, based on the advice he received from Marks, he failed to disclose the disciplinary complaints that had been filed against him, as well as his involvement in legal proceedings surrounding his license revocation.

Kaminski stated that he had no difficulty receiving records from the California and New York medical authorities and that the proceedings had not been expunged. Respondent later admitted that the above information that he had given to the OAE was false and that

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2 Respondent had become a licensed physician in 1984, fifteen years before the OAE interview.

3 1T refers to the transcript of the June 16, 2000 hearing before the DEC.

he had not misunderstood the questions on the bar application or sought advice from Marks. Instead, as seen below, respondent attributed his misrepresentations on the bar application and to the OAE to various physical and mental disorders.

According to Kaminski, respondent stated to him that he surrendered his medical license because he was applying to law school and did not want to pay to maintain a physician's license, if he would no longer be practicing medicine. Respondent told Kaminski that, prior to attending the OAE interview, he had tried unsuccessfully to reach Marks and that Marks was ill and of retirement age. After the interview, Kaminski easily located Marks' telephone number and determined that Marks was fifty-four years old and worked six days a week.

In his September 30, 1999 answer to the complaint, respondent repeated the misrepresentations that he had made during the OAE interview. Although he admitted that he had failed to disclose required information in the certified statement of candidate, he claimed, in his answer, that he had misunderstood the questions about education and employment and that he had relied on Marks, who had advised him that, because the matter had been expunged, he was not required to reveal information about the medical disciplinary proceedings. As mentioned above, respondent later admitted that this information was false.

On June 8, 2000, eighteen days before the ethics hearing, respondent filed an amended answer stating that he "was suffering from severe cognitive, health and psychiatric conditions such that he panicked, rationalized his answers and interpreted the questions in a manner that did would [sic] require disclosure of the omitted facts." Yet, in his amended answer, respondent persisted that he had contacted Marks before he completed the bar application and that Marks had advised him that, because the medical disciplinary proceeding had been dismissed and expunged, he did not have to disclose it.

As noted earlier, respondent did not dispute the allegations of the complaint, but contended, by way of explanation of his actions — not as mitigation — that he suffered from medical conditions, both physical and mental. Respondent and his medical expert, psychiatrist Robert Sadoff, testified in great detail about respondent's personal and medical background. According to respondent, he was raised by strict Polish Catholic parents, who were very private and stoical and had high expectations of him. He was under a great deal of pressure to achieve and to take care of his two sisters. As a result of this upbringing, respondent had difficulty accepting any shortcoming on his part and developed a strong sense of shame and humiliation about failure.

Respondent's physical symptoms first manifested themselves in the early 1980s, while he was a resident at the State University of New York. He experienced intestinal cramps, nausea, vomiting, lightheadedness, dizziness and difficulty concentrating. During

this period, respondent also suffered from sleeplessness, usually sleeping only two hours per night. This sleep pattern continued through 1984, while respondent worked at New York Medical College.

Respondent contended that in 1985, when he submitted his applications for hospital privileges, he had been hospitalized with intestinal cramps and had been misdiagnosed as suffering from Crohn's disease. He asserted that his sleep patterns and energy level during the mid-1980s were the reverse of his former sleep-deprived years, stating that he had very little energy, had difficulty awakening in the morning and could work only a few hours per week. Respondent recalled that, although he was concerned about losing his job, he simply could not work more hours. He began to experience panic attacks, characterized by chest pains, shortness of breath, palpitations, sweating and an inability to focus or concentrate.

According to respondent, at the end of 1998 his physician, Dr. Dworkin, prescribed Zoloft, an anti-depressant. Respondent testified that, after the maximum dosage of Zoloft proved ineffective, Dr. Dworkin recommended that he be examined by a psychiatrist. In the fall of 1999, after the ethics complaint had been filed, respondent sought treatment from Dr. Garrett Kramer, a psychiatrist. Dr. Kramer eventually diagnosed respondent with bipolar disorder, prescribing various medications.

With respect to his current state of health, respondent stated that he continues to see Dr. Kramer once a week for psychotherapy and takes prescribed medicine. According to

respondent, with the combination of therapy and medication he is now able to work a full day, in contrast to his sleep patterns in California, when he could not stay awake after noon. He added that he controls his intestinal problems by monitoring his food intake.

Respondent testified that he suffered from panic attacks for more than fifteen years, but did not seek psychiatric treatment until the end of 1999:

> My family, my mother suffers from the same problem and she, when I used to complain about it, she was just saying well, that's just our family, we tend to be on the nervous side. My mother's not a trained medical person by any means, but that's what she always told me, and I always though that, that was normal. I had no reference point. I just thought that people get real nervous and some people get even more nervous and when that happens, that's just me. . . . I didn't realize that when people got nervous that [sic] their brain didn't shut down like mine did.
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> [1T118-119]

According to respondent, when he received the April 6, 1999 letter from the OAE notifying him of the grievance and scheduling the interview, he "went into complete shock . . . I had went [sic] into sweats, chest pain, shortness of breath, my mind just couldn't deal with it." Respondent asserted that, before he walked into the interview room at the OAE office, he went into a panic state and suffered from chest pain, shortness of breath and palpitations, adding that his mind "shut down."

Respondent conceded that he had not been candid with his own attorney in this matter. Although his attorney expressed disbelief about respondent's version of events, respondent continued to misrepresent the facts.

Respondent offered the testimony and psychiatric report of Dr. Robert Sadoff. At the request of respondent's attorney, Dr. Sadoff examined respondent on January 20 and May 19, 2000. After the first visit, Dr. Sadoff referred respondent to psychologist Gerald Cooke, Ph.D., for testing and evaluation. Dr. Cooke submitted a February 8, 2000 report, in which he diagnosed respondent with avoidant personality disorder, obsessive compulsive disorder, panic disorder without agoraphobia and major depression with obsessive guilt. At respondent's counsel's request, Dr. Cooke performed a full neuropsychological evaluation to determine whether respondent suffered from a cognitive disorder. In an April 7, 2000 addendum to his earlier report, Dr. Cooke concluded that respondent suffered an organic brain dysfunction, as illustrated by lower than expected IQ and memory scores. According to Dr. Cooke's report, respondent had viral encephalitis (infection of the brain) in 1984, causing a cognitive disorder with amnestic (memory loss) features.

A review of Dr. Cooke's report demonstrates that respondent repeatedly made misrepresentations to him. For example, respondent told Dr. Cooke that Marks advised him that the medical discipline in California had been administratively expunged and that he had consulted with Marks before answering the questions on the bar application. Respondent also told Dr. Cooke that Marks was "up in age and does not remember a lot of this." Respondent further indicated to Dr. Cooke that, at the time that he submitted the bar application, he was

employed by the Beasley law firm, where he was taught to answer only questions that are asked and not to volunteer any information. Respondent stated to Dr. Cooke that he filled out the bar application relying on that advice

In his testimony, Dr. Sadoff agreed with Dr. Cooke's conclusion that in 1984 respondent suffered a viral encephalitis that left him with residual cognitive deficits. He also mentioned that, when respondent sought a second opinion about the Crohn's disease diagnosis, he was told that he suffered from irritable bowel syndrome, not Crohn's disease. Dr. Sadoff opined that respondent's panic attacks were aggravated by his bipolar condition.

Dr. Sadoff stated that, because respondent was subjected to intense family pressure to succeed, he could not admit failure and suffered a great deal of humiliation and embarrassment when confronted with failure. Dr. Sadoff noted that, in addition, when the pressure became too great, respondent became either very depressed or manic. At this point, respondent would become psychotic, lose touch with reality and exercise impaired judgment. Dr. Sadoff concluded that, although respondent realized that misrepresenting his history on the bar application was wrong, he could not admit to himself, let alone in writing on an application to be reviewed by others, that he had been disciplined in California. According to Dr. Sadoff, respondent's misrepresentations were not the product of ill will, but of the mental and physical condition that influenced his decision-making.

Dr. Sadoff conceded that respondent knew right from wrong and was aware at the time that he submitted the certified statement of candidate that he was making misrepresentations. Dr. Sadoff stated that respondent was able to convince himself or rationalize that his answers were appropriate because he did not want to think about that part of his life.

Dr. Sadoff relied on Dr. Cooke's report in reaching his conclusions. He conceded that he had not been aware that respondent had lied to Dr. Cooke or to the OAE. In addition, it is clear that Dr. Sadoff did not entirely understand the significance of respondent's misrepresentations on the bar application:

> A. [H]e said he spent the three years going to law school, now felt he did not know how to answer the questions and did not want to jeopardize three years of law school education. But that's a rationalization, that's not reality. I mean you don't jeopardize three years of education because you answered something in a different way. It doesn't make sense to me. . . .
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> Q. Wouldn't it be fair to say that what he meant by that was he didn't want -- he was afraid that he would be denied admission, that he would not be admitted to the bar, isn't that exactly what that sentence means?
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> A. Oh, okay. I didn't read it that way, but I'm sure it could mean that. That he had gone to law school and didn't want to jeopardize having done that and then not get into the bar, yeah.
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> [2T75-75][4]

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4 2T refers to the transcript of the September 28, 2000 hearing before the DEC.

With respect to respondent's current state of health, Dr. Sadoff testified that respondent's bipolar disorder is stabilized with the four medications that he currently takes and that he has the capacity to be truthful. He opined that, although respondent has the capacity to be honest about his medical disciplinary history, he could not say that respondent will always do so.

Respondent presented the testimony of nineteen other witnesses: his two employers and seventeen "character witnesses." His employers testified that they are very pleased with respondent's performance, that he concentrates on medical malpractice matters, that he has an excellent relationship with clients, and that he is honest, well-respected and productive.

Although the seventeen witnesses spoke highly of respondent's character, it appeared that most of them had not been informed that the reason for the ethics hearing concerned misrepresentations made by respondent. Most of the witnesses testified that respondent had told them that the hearing was necessary for respondent to have his law license renewed. After the character witnesses had testified, the hearing panel asked respondent why so many of them had the wrong impression about the reason for the hearing:

> Q. I wondered about the impression that many of the witnesses had that this was about a license renewal and some problem with the forms. Do you have anything to say about that, sir?
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> A. I, when I was explaining to the various character witnesses that I contacted, most of them don't understand the nuances of an application

to the bar and so what I explained to them is that I needed a person who was willing to speak on my behalf regarding my character and that the issue being discussed at this meeting would be the application I filed for my license and whether or not I would continue having a license in New Jersey. . . .

Q. Dr. Czmus, did you use the term renew my license with your character witnesses?

A. I used the word that if the proceedings were adverse, I would not be able to renew my license. . . .

Q. Did you tell all your character witnesses that you made false statements on your application to be an attorney in New Jersey?

A. Yes, I did.

[2T145-147]

* * *

The DEC found that respondent violated *RPC* 8.1(a) and *RPC* 8.4(c), concluding that respondent made misrepresentations to the OAE throughout its investigation, as well as to his attorneys, his experts, his witnesses and the hearing panel. The DEC noted that respondent (1) never corrected the misrepresentations made on the certified statement of candidate; (2) continued to lie even on his amended answer filed in June 2000; (3) was not truthful with his experts; (4) was not truthful with his character witnesses, by telling them that the DEC proceeding involved a license renewal and by failing to tell them that he had

made false statements on his bar application; and (5) lied to the hearing panel, when he claimed that he had fully explained to his character witnesses the reason for the ethics hearing. According to the DEC, respondent's pattern of deceit indicates that he "does not yet meet the required ethical standards."

The DEC recommended that respondent's license be revoked. Based on his satisfactory performance as an attorney for five years, the DEC recommended that he be permitted to reapply for admission "and provide the Committee with further and sufficient evidence of his rehabilitation."

* * *

Following a *de novo* review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence. Indeed, respondent acknowledged that he misrepresented his background on the bar application, contending, by way of explanation for his conduct, that his physical and mental disorders impaired his judgment. Respondent's dishonesty, however, pervaded the entire ethics proceeding, not just the bar application.

As noted above, the facts are not disputed. While respondent was a licensed physician in California, he applied for privileges at two local hospitals, as required by his employer.

In the applications, respondent misrepresented that he had been board certified, when he was only board eligible. Respondent entered into a stipulation whereby the revocation of his license was stayed for five years and he was placed on probation during that period. After a complaint was filed to revoke the stay, based on instances of gross negligence and other professional misconduct, respondent surrendered his California license and, ultimately, his New York license after reciprocal disciplinary proceedings were initiated in that state.

When respondent applied to Temple University Law School, he disclosed that he had attended medical school and that he had been a licensed physician. He failed, however, to disclose this information on his New Jersey bar application, even though the questions are much more detailed than those on the law school application. The bar application specifically addresses education, employment, other licenses, disciplinary proceedings and legal proceedings. Respondent lied on each of these questions. Moreover, the instructions in the certified statement of candidate notify applicants that candor and truthfulness are important, that disclosure must be as detailed as possible and that failure to disclose requested information may cause the certification to be withheld.

Respondent's pattern of deception continued throughout the ethics investigation. He made the following misrepresentations during the OAE interview: (1) he did not disclose that he had a medical degree because he had misunderstood the bar application question about education, believing that it addressed only undergraduate education; (2) he did not

disclose his employment history as a physician because he worked for Kennard Lab Associates and did not have his own practice; (3) he did not disclose that he had been disciplined as a physician or that he was involved in legal proceedings because, at the time that he completed the bar application, he was advised by his California attorney, Marks, that the medical disciplinary matter had been administratively expunged and that disclosure was not required; (4) he did not disclose that he had been licensed as a physician because the question addressed licenses in which proof of good character had been required and, since he had completed the application twenty-five years earlier, he did not recall that proof of good character was required; and (5) Marks was ill, was of retirement age and could not be contacted because his telephone number was not known.

Respondent continued making similar misrepresentations in both answers to the formal ethics complaint. There, he claimed that he had contacted Marks before completing the bar application and that Marks had advised him that the administrative expungement obviated any disclosure requirement. Respondent later admitted that not only had Marks not given this advice, but he had not even contacted Marks before submitting the bar application.

Respondent's pattern of lies continued. He misrepresented to his medical experts, Dr. Cooke and Dr. Sadoff, the circumstances surrounding his medical discipline and the bar

application. He was not even forthcoming with his own attorney, who recognized respondent's lack of candor.

More egregiously, respondent was not truthful to his character witnesses, most of whom testified that they understood from respondent that the reason for the ethics hearing was the renewal of his law license. When questioned by the hearing panel about this pattern of testimony, respondent insisted that he had told every witness that he had lied on his bar application. The DEC correctly rejected respondent's testimony as incredible. The irony here did not escape our attention: respondent lied to the same people he was counting on to testify to his veracity and good character.

The record is replete with other instances of respondent's deceit. Although at various times respondent claimed that a clerical worker who had typed the application had checked the wrong box on the application, he also gave an alternate version that his "employee," William Kennard, had made a mistake on the application. In fact, Kennard was respondent's employer. Moreover, according to the disciplinary complaint filed by the California Board of Medical Quality Assurance, the applications were submitted on two different dates: August 1 and September 18, 1985. It is unlikely that the same typographical error was made on two separate applications on two different dates.

Although respondent testified that, by the time he received the petition to revoke his medical license, he had already applied to law school, the petition is dated September 18,

1991, while the law school application is dated December 4, 1991. Respondent, thus, had been aware that his medical license was in jeopardy at the time that he applied to law school.

Another disturbing pattern that emerged from this record was respondent's refusal to accept responsibility for his actions. He claimed that he had not sought medical intervention earlier because, when he discussed his panic attack symptoms with his mother, she answered that the family "tend[ed] to be on the nervous side." As a licensed medical doctor, respondent professed to rely on his mother's advice, contending that he had "no reference point" and did not realize "when people got nervous that their brain didn't shut down like mine did." While even a lay person could be expected to recognize that panic attacks are not normal behavior, as a licensed physician respondent not only should have known better, but had the resources and the opportunity to discuss his symptoms with a medical professional, even on an informal basis. He chose not to do so. Although respondent alleged that he had suffered panic attacks for fifteen years, he failed to consult a psychiatrist until the end of 1999, after the ethics complaint had been filed. Respondent contended that his physician, Dr. Dworkin, referred him to a psychiatrist after the maximum dosage of Zoloft was ineffective. He failed to offer the testimony or a report from Dr. Dworkin, however.

In his continuing pattern of refusing to accept responsibility for his own actions, respondent blamed either his employer, Kennard, or an unnamed typist for the mistake on

his application for hospital privileges, in which he misrepresented that he was board certified. Although he committed multiple instances of medical malpractice, in one case resulting in the blindness of a patient, respondent falsely claimed that his employer "forced" him to operate on "high risk" patients. He further alleged that almost all of the complaints originated from members of one family, after they had been contacted by a collection agency for non-payment of their bill, implying that the malpractice lawsuits were not meritorious. He even alleged that, because he had been taught at the Beasley law firm to answer questions narrowly, he did not disclose required information on his bar application.

Respondent submitted medical evidence to explain his failure to reveal his background on the bar application. Yet, he was able to disclose that he was a physician when it suited his purpose, that is, when he applied to law school (before his bar application) and when he was interviewed for a legal job (after his bar application). Moreover, Dr. Sadoff's report was based, in part, on Dr. Cooke's report, which reflected misrepresentations by respondent. Dr. Sadoff was also not aware that respondent had lied to the OAE and obviously did not understand the significance of respondent's statement that, if he did not answer a question properly, he would be jeopardizing three years of law school.

Significantly, neither Dr. Sadoff nor Dr. Cooke directly diagnosed respondent with bipolar disorder. Dr. Sadoff's May 22, 2000 report indicates that respondent is being considered for a diagnosis of bipolar disorder and that respondent's treating psychiatrist, Dr.

Kramer, has entertained that diagnosis as well. At that point, Dr. Kramer had been treating respondent for many months, as of the prior fall, and still had not diagnosed respondent with bipolar disorder. Dr. Sadoff, nevertheless, testified at the September 28, 1999 hearing that "[w]e now know that Mr. Czmus has a disorder called bipolar disorder," presumably based on Dr. Kramer's conclusion. Dr. Kramer, however, did not testify or submit a report.

In summary, we find that, respondent engaged in a pattern of deceit and misrepresentation to the hospitals where he was seeking privileges, to the attorney disciplinary authorities, to the psychologist and psychiatrist he had retained as experts, to his attorney, to his character witnesses and to the DEC, in violation of *RPC* 8.1(a) and *RPC* 8.4(c).

With respect to the quantum of discipline, the Court has revoked the licenses of attorneys who have lied on applications for bar admission. In *In re Scavone*, 106 *N.J.* 542 (1987), the attorney misrepresented on his law school application that he was a member of a minority group. After he had completed one year of law school, the attorney altered the grades on his transcript and falsified his resumé to indicate that he had achieved a higher score on the law school aptitude test, all in an effort to obtain employment. After the law school discovered the misrepresentations, it offered the attorney the option of withdrawing or being expelled. The attorney chose to withdraw, signing an agreement that, if he failed to withdraw, the law school would immediately convene a disciplinary committee to hear

charges against him. The attorney subsequently graduated from another law school and applied to take the New Jersey bar examination. In his certified statement of candidate, he failed to disclose that he had withdrawn from another law school under the threat of disciplinary charges.

At a hearing conducted by the Committee on Character ("the committee"), the attorney maintained that his answer on the certified statement was correct because his withdrawal from law school had been voluntary. He also asserted that he believed that the second law school would provide the information to the committee. At the hearing, the attorney showed no remorse and demonstrated that he still had no regard for the truth, testifying that today he would complete the application in the same way and that, if he answered differently, it would be only to "appease" the committee.

In revoking the attorney's license to practice law, the Court concluded that he was not fit to practice law because of his concealment of material facts from the committee. The Court reasoned that

> [c]andor and honesty are a lawyer's stock and trade. Truth is not a matter of convenience. Sometimes lawyers may find it inconvenient, embarrassing, or even painful to tell the truth. Nowhere is this more important than when an applicant applies for admission to the bar.
>
> [*Id.* at 553]

The Court found that the attorney's inability to tell the truth about himself demonstrated a lack of good moral character and unfitness to practice law. The Court was particularly troubled by the fact that the attorney had not rehabilitated himself. The Court, nevertheless, did not foreclose the possibility that, at some future time, the attorney might be able to demonstrate his fitness to practice law.

In *In re Gouiran*, 130 *N.J.* 96 (1992), the attorney failed to disclose disciplinary proceedings in connection with his real estate broker's license. The attorney misrepresented in his certified statement of candidate that he had not been a party to any civil proceeding, that he had not been disciplined as a member of any profession and that disciplinary proceedings had not been filed against him. At the ethics hearing, the attorney explained that, because he had read the questions narrowly, he had answered them in good faith, adding that he would answer them differently now. Although the Court revoked his license, it stayed the revocation to permit the attorney to reapply for admission. The stay was based on the significant passage of time (eight years) since the attorney had applied for bar admission, the attorney's recognition of his mistake and the attorney's current awareness of a lawyer's duty of candor.

In another case, the Court declined to revoke an attorneys' license, choosing instead to impose discipline. *In re Guilday*, 134 *N.J.* 219 (1993). There, the attorney failed to disclose on his bar admission application that, beginning when he was seventeen years old

until he was twenty-seven, he had been arrested five times for driving while under the influence of alcohol and once for disorderly conduct. After he had been admitted in New Jersey and Pennsylvania without disclosing his arrest record, he applied for admission to the Delaware bar. The Delaware Board of Bar Examiners discovered one of the charges against the attorney and an investigator questioned the attorney about its omission from his bar application. The attorney did not disclose to the investigator the rest of his arrest record. In performing a final review of the attorney's bar application, the Delaware Board discovered one of the attorney's drunk driving arrests. Again, the attorney declined to reveal the remainder of his arrest record, disclosing only the specific violation identified by the investigator. After the Delaware Board determined that the attorney failed to produce evidence of good character, the attorney requested a hearing, where he disclosed his entire arrest record.

Shortly before that hearing, the attorney notified the New Jersey Board of Bar Examiners of his prior arrests. The committee recommended revocation of the attorney's license to practice law, based on the his practice of deception over a six-year period. The committee rejected the explanation offered by a psychiatrist that the attorney was "traumatized about reporting past offenses" because of a strict Catholic upbringing and high school education, because of his relationship with his father, "a punitive and critical parent," and because of his college's military, authoritarian approach to education.

We, too, rejected that attorney's explanation that he did not intend to conceal his arrests, but had repressed those incidents due to embarrassment and humiliation, noting that he exercised "selective self-restraint" in not disclosing them because he was ashamed. We also observed that the attorney engaged in a pattern of deception and chose to perpetuate his wrongdoing when given an opportunity to rectify it. The Court suspended the attorney for six months.

In another context, the Court ruled that a candidate for admission to the bar was unfit to practice law. *Application of Triffin*, 151 *N.J.* 510 (1997). In that case, the candidate had been denied admission to the Pennsylvania and New Jersey bars, based on the Pennsylvania courts' findings of civil fraud, unauthorized practice of law and unprofessional conduct in two contested legal matters; his lack of respect for the judicial process; his lack of financial responsibility; and the lack of even a scintilla of evidence of rehabilitation. Although the majority of the thirteen attorneys who testified at the hearing before a panel of the Committee on Character testified that the candidate had positive attributes, several of the witnesses raised questions about his honesty and integrity. Specifically, one attorney testified that the candidate had represented himself as an attorney at a meeting of the Check Cashing Association of Pennsylvania, had failed to provide timely notice of depositions and had stated that, as a non-attorney, he need not follow the rules applicable to attorneys. Another attorney testified that the candidate had reneged on a settlement after gaining access to the

attorney's client. Finally, according to another attorney, the candidate attempted to use threats or bribes to obtain business and favorable testimony.

In assessing whether the candidate had demonstrated rehabilitation, the Court listed the factors enumerated in *Application of Matthews*, 94 *N.J.* 59 (1983):

> (1) an applicant's complete candor in filings and proceedings conducted by the Committee on Character; (2) an applicant's renunciation of his or her past misconduct; (3) the absence of misconduct over a period of intervening years; (4) 'a particularly productive use of [the applicant's] time subsequent to the misconduct'; and (5) '[a]ffirmative recommendations from people aware of the applicant's misconduct who specifically consider the individual's fitness in light of that behavior.'
>
> *[Application of Triffin, supra*, 151 *N.J.* at 527.]

The Court, thus, directed the Committee on character to withhold certification of Triffin's character and fitness without prejudice to his right to present evidence of rehabilitation no earlier than three years from the filing of the Court's opinion.

Applying the *Matthews* standard to respondent, we find that he has not rehabilitated himself. Because this matter arose after respondent had gained admission to the bar, there were no Committee on Character proceedings, as in *Matthews*. Respondent, however, repeatedly demonstrated a lack of candor during the ethics investigation and the disciplinary proceedings. He has yet to renounce his pattern of deceit. Although respondent has no disciplinary history, his continuing misrepresentations to the OAE, to his attorney, to his expert witnesses, to his character witnesses and to the hearing panel preclude a finding of

"absence of misconduct over a period of intervening years." Moreover, although respondent presented the testimony of nineteen "character witnesses," the majority were not aware of his ethics infractions and did not consider his fitness in light of that behavior. We, thus, conclude that respondent has not displayed evidence of reform and rehabilitation.

Here, as in *Guilday*, respondent also exercised "selective self-restraint," engaged in a pattern of deception and failed to rectify his wrongdoing, despite numerous opportunities to do so. Although there may be little doubt that respondent was embarrassed about his medical disciplinary history, his failure to reveal it demonstrates that he does not possess the integrity and reverence for truth to practice law. As in *Scavone, supra*, respondent's inability to tell the truth about himself demonstrates a lack of good moral character and unfitness to practice law.

Based on the foregoing, five members determined to revoke respondent's license to practice law and not to permit him to apply for re-admission to the bar for a period of two years. One member voted to revoke the license, but to allow respondent to apply for re-admission in six months. One member voted to stay the revocation for six months to permit respondent to apply for re-admission. Two members did not participate.

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

Dated: 5/29/07

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Akim F. Czmus
Docket No. DRB 00-384

Argued: February 8, 2001

Decided: May 29, 2001

Disposition: Revocation of license

Members	Revoke/re-apply two years	Revoke/re-apply six months	Revoke/conditions	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:	5	1	1			2

Robyn M. Hill 7/25/01

Robyn M. Hill
Chief Counsel