SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 16-406
District Docket No. XIV-2014-0524E

IN THE MATTER OF	
GWENDOLYN FAYE CLIMMONS	
AN ATTORNEY AT LAW	

Decision

Argued: March 16, 2017

Decided: June 8, 2017

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se, via telephone conference call.

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), pursuant to R. 1:20-13(c)(2), following respondent's conviction of one count of conspiracy to commit health care fraud (18 U.S.C. §1347 and §1349) and four counts of health care fraud and aiding and abetting the commission of those crimes (18 U.S.C. §1347 and §2), violations of RPC 8.4(b) (commission of criminal act that

reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Although respondent is not a member of the New Jersey bar, she is registered as a multijurisdictional practitioner (MJP) in this State. Thus, the OAE requests that respondent permanently be barred from practicing as an MJP in this jurisdiction. Respondent argues that this matter is not ripe for the imposition of final discipline because she is preparing a motion for post-conviction relief, under 28 U.S.C. § 2255, which is not due for filing until October 3, 2017.

We rejected respondent's argument that this matter is not ripe for the imposition of final discipline because she has not "concluded all criminal proceedings or direct appeals stemming from her federal criminal conviction." To the contrary, respondent has exhausted all direct appeals. Thus, under R. 1:20-13(c)(2), the OAE was authorized to file a motion for final discipline. Her unfiled motion for post-conviction relief is a collateral attack on the sentence imposed on her and, thus, not subject to R. 1:20-13(c)(2).

For the reasons set forth below, we determined to grant the motion for final discipline and recommend to the Court that

respondent permanently be barred from practicing in New Jersey as an MJP.

In 2013, respondent, a Texas resident and member of its bar, was admitted to the New Jersey bar as an MJP. Although respondent has no disciplinary history in this State, on October 17, 2014, the Court temporarily suspended her, based on the federal criminal conviction. In re Climmons, 219 N.J. 623 (2014). As of December 16, 2016, she was incarcerated in the Harris County Jail in Houston, Texas.

On April 26, 2012, the Grand Jury for the United States District Court for the Southern District of Texas, Houston Division, returned a five-count indictment, charging respondent with one count of conspiracy to commit health care fraud, a violation of 18 U.S.C. § 1347 and § 1349, and four counts of health care fraud and aiding and abetting health care fraud, a violation of 18 U.S.C. § 1347 and § 2. The charges arose out of fraudulent claims submitted to Medicare by respondent's ambulance transport service, Urgent Response Emergency Medical Services, LLC (Urgent Response), between April 2009 and December 2011. The indictment sought forfeiture of nearly $1 million.

A three-day trial took place on October 28, 29, and 30, 2013. On October 30, 2013, the jury convicted respondent on all five counts.

On June 13, 2014, United States District Judge Melinda Harmon sentenced respondent to 97 months, on each count, to run concurrently, followed by three years of supervised release. Respondent also was ordered to pay a $500 assessment and $972,132.22 in restitution to Medicare.

At respondent's June 13, 2014 sentencing, Judge Harmon briefly summarized the evidence supporting respondent's conviction.

As stated earlier, respondent was the owner and operator of Urgent Response, which provided "nonemergency ambulance services to Medicare beneficiaries in the Houston area." From approximately January 2010 through approximately December 2011, respondent, as Urgent Response's owner, billed Medicare for the transportation of Medicare beneficiaries between their homes and certain mental health treatment facilities. At the time, respondent knew that the ambulance transport services were "not medically necessary and/or not provided." Further, respondent participated in a conspiracy that fraudulently billed Medicare $2,427,092.77, resulting in an actual loss of $972,132.22. In so doing, respondent "abused the position of trust as owner of Urgent Response with Medicare, who relied on her to submit legitimate claims for reimbursement." Moreover, her abuse of

that position of trust "significantly facilitated the commission and/or concealment of the offense."

The judge observed that respondent "was held accountable in the [sentencing] guidelines for the total intended loss amount attributable to her." She was assessed a four-level increase "for being an organizer or leader of a criminal activity that involved five or more participants, including but not limited to five former EMTs at Urgent Response whom she either recruited or directed to assist in the fraudulent scheme." Finally, the judge noted that, because respondent planned to appeal the jury's verdict, she "did not accept responsibility for her involvement in the instant offense."

In addition, the judge noted, on January 15, 2013, while respondent was on bond for the Medicare fraud, she was arrested in Harris County, Texas for theft and for securing execution of a document by deception of an amount greater than or equal to $200,000. At sentencing, Judge Harmon ruled that any sentence imposed on respondent in the State fraud case would run consecutively to the sentence imposed in the Medicare fraud matter.

On October 21, 2015, the Fifth Circuit affirmed respondent's federal conviction. On October 3, 2016, the United States Supreme Court denied respondent's petition for writ of

certiorari. Climmons-Johnson v. United States, 137 S. Ct. 238 (2016).

* * *

Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-3(c).

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Maqid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Specifically, the conviction establishes a violation of RPC 8.4(b). Pursuant to that Rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Moreover, the facts underlying respondent's conviction evidence that she was engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, a violation of RPC 8.4(c). Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Maqid, supra, 139 N.J. at 451-52; In re Principato, supra, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the respondent must be considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the

bar." Ibid. (citations omitted). Rather, many factors must be taken into consideration, 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, 118 N.J. 443, 445-46 (1989).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse the ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997) (citation omitted). "To the public he is a lawyer whether he acts in a representative capacity or otherwise." In re Gavel, 22 N.J. 248, 265 (1956).

In respect of the appropriate discipline, we are guided by two cases involving attorneys who committed health care fraud: In re Luber, 205 N.J. 8 (2011), and In re Percy, 226 N.J. 475 (2016). Luber received a three-year suspension, and Percy was disbarred. Our review of the two cases leads us to the conclusion that the appropriate quantum of discipline for respondent's misconduct is a permanent bar from practicing as an MJP in New Jersey.

In Luber, following an investigation by the Federal Bureau of Investigation, the attorney pleaded guilty to mail fraud, 18 U.S.C. § 1341, and health care fraud, 18 U.S.C. § 1347. In the

Matter of Jordan B. Luber, DRB 10-178 (August 30, 2010) (slip op. at 1). Specifically, the attorney knowingly used false paperwork, medical records, and treatment records, created by a fake physical therapy and rehabilitation center, to negotiate the settlement of a personal injury action, which he had filed on behalf of two "clients," who were FBI agents. Id. at 6-7. The settlement totaled $15,000, of which the attorney retained $6,000 as his fee. Id. at 7.

Luber was sentenced to sixty days in prison, followed by one year of supervised release, three months of which were to be under house arrest with electronic monitoring. Ibid. He also was required to pay a $200 special assessment, a $10,000 fine, and $6,000 in restitution. Ibid. The Court imposed a three-year suspension. Luber, supra, 205 N.J. 8.

In Percy, the attorney pleaded guilty to conspiracy to defraud the United States, 18 U.S.C. § 371.1, in one matter, and to health care fraud, 18 U.S.C. § 1347, in another. In the Matter of Kirill Percy, DRB 15-258 (May 9, 2016) (slip op. at 1-2). In respect of the fraud on the United States, Percy was sentenced to imprisonment for one year and one day, followed by two years of supervised release, and ordered to pay a $30,000 fine. Id. at 3.

The health care fraud matter involved Percy's seven-year use of "runners," who solicited automobile accident victims and directed them to medical offices, of which Percy was a full or partial owner, for treatment that was not medically necessary. Id. at 3-4. Insurance companies would then pay the medical offices for the unnecessary medical treatments. Ibid.

Percy admitted that, for three months, he conspired with others to commit health care fraud by submitting false documents for medical claims for treatment at two clinics in which he had an ownership interest. Id. at 4.

Percy received a five-year term of probation, including six months' house arrest with electronic monitoring, and was ordered to complete 200 hours of community service and pay $192,536 in restitution. Id. at 3-4. Although his cooperation in a larger criminal investigation ultimately assisted the government in identifying 264 other "wrongdoers," five of whom were arrested, the sentencing judge was concerned that Percy had not been completely forthcoming about his finances. Id. at 4. Moreover, some of his interactions with the court showed a "disturbing lack of candor." Ibid. The Court disbarred Percy. Percy, supra, 226 N.J. 475.

A comparison of these cases to respondent's misconduct leads us to conclude that disbarment would be warranted were

respondent a member of the New Jersey bar. Luber received a three-year suspension. Yet, his conduct paled in comparison to respondent's. Luber was indicted on thirteen counts of fraud, eight counts of mail fraud, and five counts of health care fraud. In the Matter of Jordan B. Luber, supra, DRB 10-178 (slip op. at 2). He pleaded guilty to just one count of mail fraud and one count of health care fraud. Ibid. Here, respondent was convicted of one count of conspiracy to commit health care fraud and four counts of committing, and aiding and abetting the commission of, health care fraud.

Further, Luber was sentenced to sixty days in prison, and ordered to pay $6,000 in restitution, whereas respondent is serving an eight-year prison sentence and must pay nearly $1 million in restitution. Thus, in our view, a three-year suspension would be insufficient discipline.

Percy's health care fraud involved a period of nearly seven years, In the Matter of Kirill Percy, supra, DRB 15-258 (slip op. at 2), while respondent's misconduct spanned approximately two. Yet, Percy's restitution was under $200,000, id. at 4, whereas respondent's was set at almost $1 million.

Percy received a five-year sentence; respondent is serving eight years. Notably, in sentencing respondent to this term, the

judge observed that the "large amount of money fraudulently obtained over the course of this scheme is significant."

Moreover, respondent did not just commit the crimes. She was the ringleader and, in that capacity, recruited and directed at least five EMTs to assist in the fraudulent scheme. Percy, on the other hand, cooperated in the investigation, which resulted in the arrest of five others.

In addition, Percy (like Luber) pleaded guilty, whereas respondent exhausted all direct appeals and is now pursuing a collateral attack on the sentence. Moreover, as the sentencing judge noted, she has not accepted responsibility for her involvement in the criminal conduct. In this regard, we note that, at sentencing, respondent informed the judge that the jury "got it wrong" and that the witnesses who testified against her had lied.

Finally, in our view, the fact that Medicare was the victim of respondent's fraud is particularly egregious. Although any health care fraud is disgraceful,[1] respondent committed fraud against the Medicare program, which provides health insurance coverage to people age sixty-five or older, younger people with certain disabilities, and those who have permanent kidney

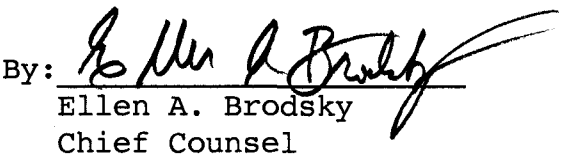
[1] Federal health care fraud includes private plans. 18 U.S.C. § 24(b).

failure, all of whom may be considered vulnerable. By defrauding Medicare, respondent took for herself funds that should have been allocated to assure that individuals such as these received adequate medical care. To do so, she took advantage of beneficiaries by submitting false claims in their names.

If respondent were admitted to the New Jersey bar, nothing short of disbarment would be appropriate under the circumstances. She is not a formal member of the bar, however. Rather, she was admitted to the New Jersey bar as an MJP and is registered as an MJP. Although respondent cannot be disbarred, we recommend that she be permanently barred from practicing in this State as an MJP, an analogous form of discipline.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Gwendolyn F. Climmons
Docket No. DRB 16-406

Argued: March 16, 2017

Decided: June 8, 2017

Disposition: Disbar

Members	Disbar	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9		

Ellen A. Brodsky
Chief Counsel