

SUPREME COURT OF LOUISIANA

NO. 2019-B-1514

IN RE: LOUELLA P. GIVENS-HARDING

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Louella P. Givens-Harding, an attorney licensed to practice law in Louisiana but currently on interim suspension.

FORMAL CHARGES

In June 2015, the United States Attorney for the Eastern District of Louisiana filed a criminal complaint against respondent in federal court in New Orleans, alleging that she engaged in a Medicare fraud scheme. Respondent was charged with conspiracy to commit health care fraud, health care fraud, and paying kickbacks. One year later, respondent was indicted on the same charges, along with a charge of conspiracy to commit wire fraud. In August 2017, respondent pleaded guilty to health care fraud in violation of 18 U.S.C. § 1347. The remaining charges were dismissed as part of a plea agreement with the Government. On November 28, 2017, respondent was sentenced to serve eighteen months in federal prison. She was ordered to pay \$575,450.07 in restitution to Medicare.

In light of her conduct, on February 2, 2018, we interinely suspended respondent from the practice of law. *In re: Givens-Harding*, 18-0055 (La. 2/2/18), 234 So. 3d 878.

DISCIPLINARY PROCEEDINGS

In February 2018, the ODC filed formal charges against respondent, alleging that her conduct violated the following provisions of the Rules of Professional Conduct: Rules 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

After being personally served with the formal charges, respondent failed to answer. Accordingly, the factual allegations contained therein were deemed admitted and proven by clear and convincing evidence pursuant to Supreme Court Rule XIX, § 11(E)(3). No formal hearing was held, but the parties were given an opportunity to file with the hearing committee written arguments and documentary evidence on the issue of sanctions. Respondent filed nothing for the hearing committee's consideration.

The ODC, however, filed a memorandum in support of discipline as well as numerous exhibits for the hearing committee's consideration, including the factual basis for the guilty plea. Therein, respondent admitted that she owned a home health care company, Bayou River Health Systems, Inc., and was employed by Maxima Home Health Agency Corporation. Bayou River and Maxima paid kickbacks, in the form of checks signed by respondent, for the referral of patients to Bayou River and Maxima. Respondent caused Bayou River and Maxima to submit claims for home health services to Medicare beneficiaries. A vast majority of these services were not medically necessary and/or were not provided, or the referrals for the services were obtained through the payment of kickbacks. From 2009 through 2015, Bayou River and Maxima submitted claims to Medicare amounting to more than \$537,000, the vast majority of which were fraudulent, and which resulted in payments of approximately \$575,000 into the bank accounts of Bayou River and Maxima.

Hearing Committee Report

After considering the ODC's submission, the hearing committee accepted that the factual allegations contained in the formal charges were deemed admitted upon respondent's failure to file an answer. The committee then made factual findings consistent with the deemed admitted factual allegations. Based on those facts, the committee determined that respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The committee determined that respondent violated duties owed to the public and the legal system by defrauding Medicare for home health services. She acted knowingly and intentionally, as clearly indicated in the detailed factual basis which was filed in her federal criminal proceeding and which explained her role in the Medicare fraud scheme. Her misconduct caused actual harm to the public, the legal system, and the legal profession by defrauding Medicare of more than half a million dollars and by leading an officer of the court to be convicted of a serious crime. Her actions put her into financial jeopardy and endangered those who suspected or reported her wrongdoing. She showed complete disregard for the federal government and its healthcare program, the patients her company served, and the employees of her company. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the committee determined the baseline sanction is disbarment.

The committee determined that the following aggravating factors are present: a dishonest or selfish motive, substantial experience in the practice of law (admitted 1990), and illegal conduct. The committee determined that there is no evidence of appreciable mitigating factors that would justify a reduction in the degree of discipline recommended.

After considering respondent's conduct in light of the permanent disbarment guidelines as well as the court's prior jurisprudence addressing similar misconduct,

the committee recommended respondent be permanently disbarred. The committee also recommended she be assessed with the costs and expenses of the proceeding.

Neither respondent nor the ODC filed an objection to the hearing committee's report.

Disciplinary Board Recommendation

After noting that the factual allegations in the formal charges are deemed admitted and proven, the disciplinary board determined the hearing committee's factual findings are not manifestly erroneous. Based on those facts, the board agreed with the committee that respondent violated the Rules of Professional Conduct as charged.

The board determined that respondent violated duties owed to the public. Her actions were knowing and intentional. As noted by the hearing committee, the amount of actual injury was great, and her actions showed a complete disregard for the federal government and its healthcare program, the patients her company served, and the employees of her company. After considering the ABA's *Standards for Imposing Lawyer Sanctions*, the board determined that the baseline sanction is disbarment.

The board agreed with the committee's determination of aggravating factors and determined that the following mitigating factors are present: absence of a prior disciplinary record and imposition of other penalties or sanctions.

After considering respondent's conduct in light of the permanent disbarment guidelines as well as the court's prior jurisprudence addressing similar misconduct, the board recommended respondent be permanently disbarred.

Neither respondent nor the ODC filed an objection to the disciplinary board's recommendation.

DISCUSSION

Bar disciplinary matters fall within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Banks*, 09-1212 (La. 10/2/09), 18 So. 3d 57.

In cases in which the lawyer does not answer the formal charges, the factual allegations of those charges are deemed admitted. Supreme Court Rule XIX, § 11(E)(3). Thus, the ODC bears no additional burden to prove the factual allegations contained in the formal charges after those charges have been deemed admitted. However, the language of § 11(E)(3) does not encompass legal conclusions that flow from the factual allegations. If the legal conclusion the ODC seeks to prove (i.e., a violation of a specific rule) is not readily apparent from the deemed admitted facts, additional evidence may need to be submitted in order to prove the legal conclusions that flow from the admitted factual allegations. *In re: Donnan*, 01-3058 (La. 1/10/03), 838 So. 2d 715.

The record in this deemed admitted matter supports a finding that respondent engaged in an insurance fraud scheme by which she defrauded Medicare of \$575,450.07. This misconduct is a violation of the Rules of Professional Conduct as alleged in the formal charges.

Having found evidence of professional misconduct, we now turn to a determination of the appropriate sanction for respondent's actions. In determining a sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved considered in light of any aggravating and

mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

Respondent's conduct was knowing and intentional. In acting as she did, she violated duties owed to the public, the legal system, and the legal profession, causing actual harm. The baseline sanction for this type of misconduct is disbarment. The record supports the aggravating and mitigating factors found by the disciplinary board.

Turning to the issue of an appropriate sanction, in Appendix D to Supreme Court Rule XIX, we set forth guidelines illustrating the types of conduct that might warrant permanent disbarment. Respondent's conduct falls squarely within Guideline 6, which indicates that permanent disbarment may be warranted for instances of "[i]nsurance fraud, including but not limited to staged accidents or widespread runner-based solicitation." Our case law further establishes that Medicare/Medicaid fraud amounts to insurance fraud, for which permanent disbarment is warranted. For example, in *In re: Abdallah*, 11-1631 (La. 10/14/11), 72 So. 3d 836, we permanently disbarred an attorney who had been convicted of conspiracy to defraud and falsely bill Medicare and Medicaid. Furthermore, in *In re: Sheffield*, 07-0288 (La. 6/15/07), 958 So. 2d 661, we permanently disbarred an attorney who had been convicted of five counts of Medicaid fraud. In *Sheffield*, we also stated that "submission of fraudulent Medicaid claims is clearly encompassed by Guideline 6, which pertains to insurance fraud."

The instant matter presents a similar situation to that presented in *Abdallah* and *Sheffield*. In order to protect the public and maintain the high standards of the legal profession, respondent should not be allowed the opportunity to return to the practice of law in the future.

Accordingly, we will accept the board's recommendation and permanently disbar respondent.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Louella P. Givens-Harding, Louisiana Bar Roll number 19920, be and she hereby is permanently disbarred. Her name shall be stricken from the roll of attorneys and her license to practice law in the State of Louisiana shall be revoked. Pursuant to Supreme Court Rule XIX, § 24(A), it is further ordered that respondent be permanently prohibited from being readmitted to the practice of law in this state. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.