GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,
v
GREGORY A. DUDZINSKI, P-23041,
Respondent/Appellant.

ADB 121-87

Decided: March 21, 1988

BOARD OPINION

Respondent seeks review of a hearing panel order suspending his license to practice law for three years as the result of his conviction of the crime of attempting to file a false claim for health care benefits. The discipline imposed by the hearing panel is modified and is reduced to a suspension of two years.

In proceedings conducted under the provisions of MCR 9.120, Respondent was ordered to show cause before a hearing panel why a final order of discipline should not be entered based upon Respondent's conviction of a crime. Specifically, the Judgment of Conviction filed by the Grievance Administrator established conclusively that Respondent's plea of nolo contendere was accepted in the Macomb County Circuit Court, and he was convicted on May 28, 1987 of the high misdemeanor of the attempt to file a false claim for health-care benefits, contrary to MCLA 752.1003(1) and MCLA 750.92.

The Attorney Discipline Board does not accept Respondent's argument that the hearing panel improperly focused upon Respondent's competence to practice law. The record below discloses that the hearing panel members did pose a number of questions to Respondent regarding his self-representation in the criminal proceedings and his understanding of the nature of those proceedings. Respondent was not represented by counsel in the proceedings before the hearing panel and it should be noted that it was Respondent himself who, from the very outset of the hearing, attempted to challenge the validity of the conviction which was entered as the result of his own plea agreement.

In some respects, it appears that the number of questions posed to Respondent to the panel members with regard to the circumstances surrounding his nolo contendere plea was primarily the result of the panel's inability to elicit clear, concise and responsive answers from the Respondent.

While it is also true that the Grievance Administrator, in his closing argument, urged that the panel consider the issue of Respondent's competence as demonstrated by his testimony at that hearing, the record simply does not support Respondent's conclusion that the panel did, in fact, give undue weight to any issues of competence when it determined that a three-year suspension would be appropriate. On the contrary, the hearing panel announced its decision from the bench after a short recess on the date of the hearing and stated that its decision was based upon the fact that Respondent was convicted of a crime of moral turpitude punishable by up to two years in prison and

that Respondent had failed to present sufficient mitigating factors to warrant a lesser form of discipline. We believe that the Board should decline to look behind the stated reasons again by the panel concerning the basis for their decision.

We are also unable to ascribe error to the hearing panel's review of Grievance Administrator's Exhibit #1, a newspaper article describing the acceptance of Respondent's plea in circuit court under the headline "Clinic Employees Plead Guilty to Insurance Fraud". It is now claimed on Respondent's behalf that the exhibit was introduced by the Grievance Administrator in an attempt to bring before the panel irrelevant, immaterial and highly prejudicial hearsay assertions relative to the facts behind Respondent's conviction. At the hearing, Respondent specifically stated that he had no objection to the panel's consideration of that newspaper article which was offered by the Grievance Administrator for the express purpose of providing some background information regarding the criminal charges in order to provide the panel a greater opportunity to assess the appropriate discipline.

In the absence of compelling evidence to the contrary, we will, in fact, presume that the Respondent was competent to undertake his own defense in these disciplinary proceedings and we therefore rule that Respondent's failure to raise any objection to the introduction of the newspaper article prevents our consideration of that issue for the first trial on appeal. Moreover, we cannot find that the information contained in the article, that Respondent was one of five employees of a psychology clinic charged with submitting $130,000 in false claims to Michigan Blue Cross-Blue Shield between 1980 and 1982, was prejudicial in light of the panel's specific disclaimer that the amount involved "was not considered by this panel in anyway in assessing the suspension."

In reviewing the level of discipline imposed by a hearing panel, the Attorney Discipline Board must consider the extent to which that discipline achieves the primary purpose of these disciplinary proceedings--the protection of the public, the courts and the legal profession [MCR 9.105]. We are also conscious, however, of our duty to assure, to the extent possible, reasonable uniformity among the numerous volunteer hearing panels, see Matter of Robert A. Grimes, 35939-A, January 1, 1981, Brd. Opn. p. 118 [discipline increased to revocation, Matter of Grimes, 414 Mich 483 (1982)]. In this case, we have considered Respondent's prior unblemished record as an attorney since his admission in 1973 and Respondent's sentence to two years probation as the result of his plea of no contest in the Macomb County Circuit Court. While neither of these factors provide an excuse or defense, they may properly be given some weight as mitigation, see Standards for Imposing Lawyer Sanctions, ABA Joint Committee on Professional Sanctions, 1986, Standards 9.32(A)(K).

As recently as 1986, this Board considered a suspension of ninety days imposed by a hearing panel in the case of an attorney convicted of the misdemeanor offense of obtaining property under false pretenses, less than $100. In Matter of Shapiro, DP 143/85, 1986. In our decision to increase discipline to a 120 days suspension, we emphasized the requirement that a suspension be imposed of sufficient duration to require that respondent appear before a hearing panel to establish his eligibility for reinstatement but we declined to adopt the view urged by the Grievance Administrator that the serious nature of respondent's conviction would automatically require an increase in discipline. In this case, we reaffirm that view that proof of a criminal conviction, especially

conviction of a misdemeanor, does not require application of an inflexible rule demanding the strictest forms of discipline. We believe that a suspension of two years in this case is more consistent with prior decisions of the Board while adequately protecting the public, the courts and the legal profession.

All concur.