

BEFORE THE HEARING BOARD  
OF THE  
ILLINOIS ATTORNEY REGISTRATION  
AND  
DISCIPLINARY COMMISSION

FILED  
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ARDC Clerk

In the Matter of:

JAMES P. GINZKEY,

Attorney-Respondent,

No. 3124355.

Commission No. 2021PR00031

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Rachel C. Miller, pursuant to Supreme Court Rule 753(b), complains of Respondent, James P. Ginzkey ("Respondent"), who was licensed to practice law in Illinois on November 5, 1979, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

COUNT I

*(violating a court order by improperly disclosing documents  
under the Medical Studies Act)*

1. On May 11, 2016, Eugene Wheat ("Eugene") experienced chest pain and went to Advocate BroMenn Medical Center ("Advocate") in Normal, Illinois. After being admitted to Advocate, Eugene received treatment from Dr. Patrick Murphy ("Murphy") in the cardiac catheterization lab on May 11, 2016 and May 12, 2016. Eugene's condition declined during and after the treatments, and he died on May 14, 2016.

2. At all times related to this complaint, the Medical Studies Act (735 ILCS 5/8-2101 *et seq.*) provided that discovery of records generated by peer review groups and medical research bodies was prohibited, although certain exceptions to the prohibition existed. Improper disclosure

of records protected under the Medical Studies Act could be criminally charged as a Class A misdemeanor pursuant to 735 ILCS 5/8-2105.

3. Respondent's practice is made up exclusively of civil litigation, including a large portion of medical malpractice cases.

4. After Eugene died, Advocate convened a peer review group, the Intraprofessional Conference Committee ("ICC"), to investigate the care Murphy provided to Eugene.

5. The ICC generated various documents in its investigation, including a letter dated June 1, 2016 to Murphy from Advocate's president of medical staff ("June 1 letter") and an ICC report dated June 16, 2016, both of which described the care Eugene received from Murphy.

6. After Eugene died, his widow, Lorrie Wheat ("Lorrie"), and Respondent discussed a medical malpractice case against Murphy. Respondent and Lorrie entered into a one-third contingency fee agreement. Respondent agreed to further investigate the matter, and he obtained Eugene's medical records to review.

7. The medical records obtained by Respondent did not include the June 1 letter or the ICC report.

8. On June 9, 2016, Murphy filed a complaint related to the suspension of his hospital privileges against Advocate in a matter docketed as *Patrick Murphy v. Advocate Bromenn Medical Center*, 2016 CH 122 (McLean County Circuit Court).

9. After Murphy filed 2016 CH 122 against Advocate, Respondent learned of the proceeding and went to the McLean County Circuit Clerk's office to view the court file.

10. After reviewing the court file, Respondent requested copies of the ICC report and the June 1 letter from the McLean County Circuit Clerk's office, and the McLean County Circuit Clerk's office provided Respondent copies of the two documents.

11. On January 5, 2018, Respondent filed a verified petition for appointment of Lorrie as special administrator of Eugene's estate and a complaint against Murphy and Advocate alleging medical malpractice and improper credentialing. The matter was docketed as *Lorrie Wheat, Special Administrator of the Estate of Eugene Wheat v. Patrick Murphy and Advocate Health and Hospitals Corporation d/b/a Advocate BroMenn Medical Center*, 2018 L 4 (McLean County Circuit Court). The court appointed Lorrie as special administrator on January 22, 2018.

12. Prior to January 18, 2018, Respondent retained Dr. Timothy Sanborn ("Sanborn") as an expert witness to testify about the care Murphy provided to Eugene at Advocate.

13. On January 18, 2018, Sanborn reviewed Eugene's medical records with Respondent and provided his opinion. At this time, Sanborn did not review the June 1 letter or the ICC report.

14. Prior to February 22, 2019, Respondent and attorneys for Advocate and Murphy litigated discovery issues in case 2018 L 4. The Honorable Rebecca Foley reviewed 41 documents, including the ICC report and the June 1 letter, to determine whether the documents were privileged in whole or in part.

15. On February 22, 2019, Judge Foley issued an order stating whether each of the 41 documents was privileged under the Medical Studies Act. Judge Foley determined that the ICC report was privileged, because the report contained recommendations arising from the peer review process. Judge Foley determined that the June 1 letter was partially privileged in that it contained both results of the peer review process and recommendations and conclusions arising from the peer review process. Judge Foley noted in the order that the court would provide Advocate with a redacted copy of the letter conforming to the court's order.

16. On November 26, 2019, Respondent sent Sanborn a first draft of a witness disclosure statement pursuant to Supreme Court Rule 213(f)(3) (“Rule 213(f) witness disclosure”), which detailed Sanborn’s identity, address, opinions about Eugene’s medical care, and the documents he used to form his medical opinion. The draft Respondent sent on November 26, 2019 did not include the ICC report or the June 1 letter.

17. On November 28, 2019, Sanborn sent Respondent emails and asked Respondent to tell him the page numbers that dealt with certain reports and notes and that addressed Eugene’s decline.

18. Sanborn did not ask Respondent in either email sent on November 28 to send additional documents.

19. On November 29, 2019, Respondent went to his office and emailed Sanborn the requested information, as well as unredacted copies of the ICC report and the June 1 letter.

20. On January 28, 2020, Respondent filed a revised Rule 213(f) witness disclosure, which listed the ICC report and the June 1 letter as documents Sanborn used to form his medical opinions about the care Eugene received.

21. Prior to February 18, 2020, Respondent reached a settlement with Advocate on behalf of Lorrie and, on February 18, 2020, Judge Foley entered an order dismissing Advocate as a party with prejudice.

22. On July 23, 2020, Murphy filed an emergency motion for a temporary restraining order requesting that Sanborn be barred from testifying because he formed his opinion using documents improperly disclosed by Respondent.

23. On July 24, 2020, Advocate filed a petition to intervene and for leave to file an emergency motion for a temporary restraining order due to Respondent's improper disclosure of documents to Sanborn.

24. On July 29, 2020, Judge Foley entered an emergency order requiring Respondent not to further disclose any material regarding 2018 L 4 that was privileged under the Medical Studies Act and setting the matter for a hearing on August 14, 2020.

25. On August 14, 2020, Judge Foley held a hearing, granted Advocate's petition to intervene, and set Murphy's and Advocate's motions for temporary restraining orders and sanctions for a hearing on September 23, 2020.

26. On September 23, 2020, Judge Foley held a hearing on the motions for temporary restraining orders and sanctions. At the conclusion of the hearing, Judge Foley announced her decision, including that Respondent was ordered to destroy all materials improperly disclosed, Respondent was to file an affidavit stating his compliance, and Sanborn was barred as a witness. Furthermore, Judge Foley ordered that Respondent personally pay Advocate and Murphy the amount of reasonable expenses incurred by Respondent's disclosure of the ICC report and June 1 letter, including reasonable attorney's fees.

27. On October 9, 2020, Judge Foley filed an order reflecting her ruling from the September 23, 2020 hearing.

28. On November 30, 2020, Judge Foley entered an order requiring Respondent to personally pay \$20,000 of Advocate's attorney's fees and \$12,000 of Murphy's attorney's fees.

29. On December 1, 2020, Respondent filed a notice of appeal of Judge Foley's November 30, 2020 order. The 4<sup>th</sup> District Appellate Court dismissed Respondent's appeal on December 31, 2020.

30. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. knowingly disobeying an obligation under the rules of tribunal, by conduct including improperly disclosing the ICC report and the June 1 letter in violation of Judge Foley's February 22, 2019 order, in violation of Rule 3.4(c) of the Illinois Rules of Professional Conduct (2010); and
- b. engaging in conduct that is prejudicial to the administration of justice, by conduct including improperly disclosing the ICC report and June 1 letter, which were privileged under the Medical Studies Act, contrary to the ruling in a court order by Judge Foley on February 22, 2019, in violation of Rule 8.4(d) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board, that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Jerome Larkin, Administrator  
Attorney Registration and  
Disciplinary Commission

By: /s/ Rachel C. Miller  
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