

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

In the Matter of:)
)
JAMES P. GINZKEY,)
) No. 2021PR00031
Attorney-Respondent,)
)
No. 3124355.)

NOTICE OF FILING

TO: Rachel C. Miller
Counsel for the Administrator
Email: ARDCeService@iadc.org; rmiller@iadc.org

PLEASE TAKE NOTICE that on June 1, 2021, I will submit the attached ANSWER and this notice to the Clerk of the Attorney Registration and Disciplinary Commission, One Prudential Plaza, 130 East Randolph, Suite 800, Chicago, Illinois 60601, for filing by electronic means through the Odyssey eFileIL system.

/s/William F. Moran, III
Counsel for Respondent

COUNSEL FOR RESPONDENT:

William F. Moran III (#06191183)
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FILED
6/1/2021 5:26 PM
ARDC Clerk

PROOF OF SERVICE

I, William F. Moran, III, state that I served copies of this Notice of Filing and the attached Answer on Counsel for the Administrator by emailing true and correct copies thereof to her at the email addresses shown on the face of this Notice of Filing on this 1st day of June 2021. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/William F. Moran, III
Counsel for Respondent

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JAMES P. GINZKEY,)
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ANSWER

Respondent, JAMES P. GINZKEY, by his attorney, William F. Moran, III, for his answer to the allegations as set forth in the Complaint filed in the above-referenced cause by the Administrator of the Attorney Registration and Disciplinary Commission, JEROME LARKIN, states as follows:

PROFESSIONAL BACKGROUND

1. In addition to his license to practice law in the State of Illinois, Respondent has been admitted to practice before the United States District Courts for the Central, Northern and Southern Districts of Illinois, the United States Court of Appeals for the Seventh Circuit and the Supreme Court of the United States, all under his current name. Respondent has not been admitted to practice before any other state court, federal court or administrative agency.
2. Respondent has no other professional license.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 1 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 2 of Count I of the Administrator's Complaint.

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

ANSWER: Respondent admits the allegations as set forth in Paragraph 3 of Count I of the Administrator's Complaint.

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

ANSWER: Respondent admits the allegations as set forth in Paragraph 4 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 5 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 6 of Count I of the Administrator's Complaint.

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

ANSWER: Respondent admits the allegations as set forth in Paragraph 7 of Count I of the Administrator's Complaint.

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).

ANSWER: Respondent admits the allegations as set forth in Paragraph 8 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 9 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 10 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 11 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 12 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 13 of Count I of the Administrator's Complaint.

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 I letter, to determine whether the documents were privileged in whole or in part.

ANSWER: Respondent admits the allegations as set forth in Paragraph 14 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 15 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 16 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 17 of Count I of the Administrator's Complaint.

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

ANSWER: Respondent admits the allegation as set forth in Paragraph 18 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 19 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 20 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 21 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 22 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 23 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 24 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 25 of Count I of the Administrator's Complaint.

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 JCC report and June 1 letter, including reasonable attorney's fees.

ANSWER: Respondent admits the allegations as set forth in Paragraph 26 of Count I of the Administrator's Complaint.

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

ANSWER: Respondent admits the allegation as set forth in Paragraph 27 of Count I of the Administrator's Complaint.

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.

ANSWER: Respondent admits the allegations as set forth in Paragraph 28 of Count I of the Administrator's Complaint.

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

Respondent's appeal on December 31, 2020.

ANSWER: Respondent admits the allegations as set forth in Paragraph 29 of Count I of the Administrator's Complaint. Answering further, Respondent would state that the reason the appeal was dismissed is that interlocutory appeals concerning discovery issues are not provided for in the Supreme Court Rules. At present, Case No. 2018 L 4 against Murphy is scheduled for a jury trial in McLean County during the week of Monday, December 6, 2021. Regardless of the result of that trial, it is the intention of Respondent to appeal Judge Foley's sanctions order issued against him, as described above. During the appeal, Respondent is going to request that the Appellate Court vacate Judge Foley's sanctions order, as the ICC report and June 1 letter are matters of public record, as included in the record and cited in the written decisions of the Appellate Court in *Murphy v. Advocate*, No. 2016 IL App (4th) 160863-U and *Murphy v. Advocate*, No. 2017 IL App (4th) 160513 issued in relation to Murphy's suit concerning the suspension of his hospital privileges, McLean County Case No. 2016 CH 122, as described in Paragraph 8 above.

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).

ANSWER: Respondent denies the allegations as set forth in Subsections (a) and (b) in Paragraph 30 of Count I of the Administrator's Complaint.

WHEREFORE, Respondent, JAMES P. GINZKEY, would request that the Complaint filed in this cause by the Administrator of the Attorney Registration and Disciplinary Commission, JEROME LARKIN, be dismissed, or in the alternative, that the matter be stayed until such time that the Appellate Court of Illinois has ruled on the discovery issues in the Murphy case, No. 2018 L 4, as described in the additional materials provided by Respondent in Paragraph 30 above.

Respectfully submitted,

JAMES P. GINZKEY, Respondent

By: /s/William F. Moran III
His attorney

COUNSEL FOR RESPONDENT:

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