

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

In the Matter of:)
)
LEE ALAN CAMPBELL,)
) Commission No. 2022PR00076
Attorney-Respondent,)
)
No. 377317.)

COMPLAINT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Jonathan M. Wier, pursuant to Supreme Court Rule 753(b), complains of Respondent Lee Alan Campbell, who was licensed to practice law in Illinois on November 17, 1969, and alleges that Respondent has engaged in the following conduct which subjects him to discipline pursuant to Supreme Court Rule 770:

COUNT I

(Lack of Diligence, Failure to Keep Client Informed, and Misrepresentations to Client – Ruth Cintron)

1. Beginning in October 2001, and continuing thereafter, Ruth Cintron (“Ruth”) sought medical treatment at Saints Mary and Elizabeth Medical Center, formerly known as St. Mary of Nazareth Hospital Center (hereafter, “St. Mary of Nazareth Hospital”). Dr. Michael M. Maghrabi was a podiatric physician at St. Mary of Nazareth Hospital. On or about December 10, 2002, Dr. Maghrabi performed surgery on Ruth’s right foot, and on or about December 31, 2002, he performed surgery on her left foot.

2. During 2004, Ruth consulted with another podiatric doctor who opined that the medical care that she had received in 2002 was improper. As a result, she underwent extensive and ongoing treatment which included physical therapy, injections, medication, ultrasound and

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surgical procedures to remove screws inserted in the original surgeries and to correct other problems resulting from improper medical care.

3. In 2006, Ruth and Respondent agreed that Respondent would represent Ruth in her claims for medical malpractice or negligent medical care against Dr. Maghrabi and other responsible parties. On or about March 13, 2006, Respondent and Ruth entered into a written contingency fee agreement relating to the medical claims. The agreement provided that Respondent would receive the following fee: 33 1/3% of the first \$150,000 recovered on Ruth's behalf, 25% of the next \$850,000 recovered on Ruth's behalf, and 20% of any amount recovered in excess of \$1 million.

4. On March 14, 2006, Respondent filed a medical malpractice lawsuit on Ruth's behalf against St. Mary of Nazareth Hospital, Dr. Maghrabi and others in the Circuit Court of Cook County. The case was docketed as *Cintron v. Saints Mary and Elizabeth Medical Center, et al.*, case number 2006 L 002708 ("2006 Lawsuit").

5. Respondent filed a sworn affidavit with the 2006 Lawsuit in which he stated that he had been retained by Ruth and that he had consulted with a health professional and reviewed two written reports from the health professional regarding the merits of Ruth's medical malpractice lawsuit. To support his affidavit, Respondent sought and received a physician's certification from Dr. David B. Moats, D.P.M. ("Dr. Moats"). In that certification, Dr. Moats stated that it was his medical opinion that the care, treatment and management that Ruth received while a patient of Dr. Maghrabi was not in accordance with the governing standard of care.

6. After filing their appearances, the defendants in the 2006 Lawsuit served Respondent with interrogatories, request for production and supplemental interrogatories on May 16, 2006. On November 29, 2006, the Honorable Judge Kathy M. Flanagan ordered that written

discovery be completed by January 24, 2007. Respondent did not comply with Judge Flanagan's order to complete written discovery by January 24, 2007.

7. On January 31, 2007, Judge Flanagan entered a case management order in which she ordered that written discovery be completed by February 28, 2007. Judge Flanagan ordered that if written discovery was not completed by that day, she would impose sanctions. Judge Flanagan set the matter for a case management conference on March 1, 2007. Respondent did not comply with the court's order to complete discovery by February 28, 2007. Instead, Respondent moved to voluntarily dismiss the complaint without prejudice. On March 1, 2007, Judge Flanagan entered an order granting Ruth leave to voluntarily dismiss the complaint. Ruth then had one year to re-file the lawsuit.

8. On February 29, 2008, before the one-year period to re-file passed, Respondent re-filed a medical malpractice lawsuit on Ruth's behalf against St. Mary of Nazareth Hospital, Dr. Michael Maghrabi, Dr. Christopher Formanek, and Dr. Hoshyarsar in the Circuit Court of Cook County. The case was docketed as *Cintron v. Saints Mary and Elizabeth Medical Center, et al.*, case number 2008 L 002346 ("2008 Lawsuit").

9. On May 13, 2008, St. Mary of Nazareth Hospital, Dr. Formanek and Dr. Hoshyarsar filed a motion to dismiss the complaint pursuant to 735 ILCS 5/2-615 ("Motion to Dismiss"). On May 20, 2008, the court set a briefing schedule on the Motion to Dismiss with Ruth's response brief due on June 16, 2008.

10. On June 16, 2008, Respondent filed a motion to vacate the May 20, 2008 scheduling order and extend the time allowed for Ruth's response. On June 23, 2008, the court entered an order vacating its prior scheduling order and setting that date for Ruth to respond to the Motion to Dismiss as July 25, 2008.

11. On July 25, 2008, Respondent filed a motion to vacate the June 23, 2008 scheduling order and extend the time allowed for Ruth's response. On August 5, 2008, the court entered an order vacating its prior scheduling order and setting that date for Ruth to respond to the Motion to Dismiss as August 15, 2008.

12. On August 15, 2008, Respondent filed a motion to vacate the August 5, 2008 scheduling order and extend the time allowed for Ruth's response. On August 28, 2008, the court entered an order vacating its prior scheduling order and setting that date for Ruth to respond to the Motion to Dismiss as September 5, 2008. Respondent filed a response to the Motion to Dismiss on September 5, 2008. The court denied the Motion to Dismiss on September 15, 2008.

13. On March 9, 2009, the court entered a case management order which provided that written discovery and disclosures be completed by April 6, 2009. On April 6, 2009, Respondent filed motion to extend the time for written discovery and disclosures. On April 15, 2009, the court entered a case management order which provided that depositions be completed by October 30, 2009.

14. On October 2, 2009, defendant Dr. Maghrabi filed a Supreme Court Rule 103(b) motion to dismiss the complaint ("Rule 103(b) Motion") because he had not been served. The motion alleged that Respondent had not exercised reasonable diligence in effectuating service on Dr. Maghrabi. On October 13, 2009, the court set a briefing schedule ordering Ruth to file a response to the motion by November 11, 2009 and set a hearing for December 1, 2009.

15. On November 10, 2009, Respondent filed a motion seeking to vacate the October 13, 2009 scheduling order and for an extension of time to respond to the Rule 103(b) Motion. On November 19, 2009, the court granted the motion and re-set the date by which Ruth would respond to December 15, 2009, with a hearing on December 29, 2009.

16. On December 15, 2009, Respondent filed a second motion seeking to vacate the November 19, 2009 scheduling order and for an extension of time to respond to the Rule 103(b) Motion. On December 29, 2009, the court granted the motion and re-set the date by which Ruth would respond to January 12, 2010, with a hearing on January 26, 2010.

17. On January 12, 2010, Respondent filed a third motion seeking to vacate the December 29, 2009 scheduling order and for an extension of time to respond to the Rule 103(b) Motion. On January 26, 2010, the court granted the motion and re-set the date by which Ruth would respond to February 9, 2010, with a hearing on February 23, 2010.

18. On February 11, 2010, Respondent filed a fourth motion seeking to vacate the January 26, 2010 scheduling order and for an extension of time to respond to the Rule 103(b) Motion. On February 23, 2010, over defendants' objection, the court granted the motion and re-set the date by which Ruth would respond to March 10, 2010, with a hearing on March 25, 2010.

19. Respondent did not respond to the Rule 103(b) motion by the court-ordered date of March 10, 2010. On March 16, 2010, Respondent filed a fifth motion seeking to vacate the February 23, 2010 scheduling order and for an extension of time to respond to the Rule 103(b) Motion. Respondent's motion was set for a hearing on March 25, 2010.

20. On March 22, 2010, defendants St. Mary and Elizabeth Medical Center, Dr. Formanek and Dr. Hoshyarsar filed a Rule Supreme Court Rule 219(c) motion to dismiss the complaint as a sanction for not responding to discovery ("219(c) Motion"). The 219(c) Motion alleged that after being served with discovery requests more than one year and eleven months ago, Respondent disregarded five court orders to respond to the discovery requests.

21. On March 25, 2010, the court set a briefing schedule for the 219(c) Motion ordering Ruth to file a response to the motion by May 6, 2010 and set a hearing for May 18, 2010 on the motion.

22. On March 25, 2010, the court entered an order granting the Rule 103(b) Motion and dismissed Dr. Maghrabi with prejudice from the lawsuit for plaintiff's failure to exercise reasonable diligence in serving Dr. Maghrabi.

23. Respondent did not file a response to the 219(c) Motion by May 6, 2020. On May 13, 2010, Respondent filed a motion seeking to vacate the March 25, 2010 scheduling order and for an extension of time to respond to the 219(c) Motion. Defendants filed an objection to the motion that same day.

24. On May 14, 2010, the court entered an order setting the 219(c) Motion for hearing on May 25, 2010.

25. On May 25, 2010, the court entered an order granting the 219(c) Motion and ordered that the plaintiff, Ruth, was barred from testifying at trial and the depositions of all of the defendants, their employees and agents were waived.

26. The 2008 Lawsuit was set for a court status on January 11, 2011. Respondent did not attend. On January 11, 2011, the court in the 2008 Lawsuit entered an order dismissing the cause of want of prosecution. Respondent received a copy of the court's order on or about January 14, 2011.

27. As of January 14, 2011, Respondent knew that the 2008 Lawsuit had been dismissed. For more than six years following the dismissal of the 2008 Lawsuit, Respondent did not tell Ruth that the 2008 Lawsuit had been dismissed.

28. After the dismissal of the 2008 Lawsuit, Respondent communicated with Ruth and her treating physician, Dr. Moats. Respondent purported to schedule Dr. Moats' deposition on several occasions after the dismissal of the 2008 Lawsuit. Respondent never communicated with the defendants' counsel regarding the scheduling of the deposition because the case had been dismissed and Respondent had no intention of taking the deposition.

29. During May or June 2012, Respondent contacted Dr. Moats' office and requested that Dr. Moats be available for a deposition in the 2008 Lawsuit on August 27, 2012 in Orlando, Florida.

30. When Respondent requested that Dr. Moats appear for a deposition on August 27, 2012, that request was false because the 2008 Lawsuit had been dismissed and Respondent had no authority or intention of conducting Dr. Moats' deposition.

31. When Respondent told Dr. Moats or someone at this office that his deposition would proceed on August 27, 2012, he knew that the request was false because the defendants in the 2008 Lawsuit were not pursuing a deposition of Dr. Moats because the 2008 Lawsuit had been dismissed since January 11, 2011.

32. In December 2014, Respondent contacted Dr. Moats and scheduled his deposition for February 27, 2015. In early February 2015, Respondent rescheduled the deposition to June 19, 2015. Dr. Moats then requested that the deposition take place on September 18, 2015. In September 2015, Respondent contacted Dr. Moats to postpone the deposition until a date unknown. Respondent then rescheduled the deposition of Dr. Moats during December 2016, but the deposition did not proceed because Respondent did not pay Dr. Moats in advance of the deposition.

33. Each time Respondent contacted Dr. Moats or his office to schedule his deposition, Respondent falsely stated that the deposition would proceed.

34. Respondent knew when he purported to schedule Dr. Moats' deposition that his statements regarding the deposition were false because the 2008 Lawsuit had been dismissed and there was no reason to take his deposition. Each time Respondent purported to schedule the deposition of Dr. Moats, he did so in order to conceal from Ruth that her case had been dismissed and was no longer pending.

35. In February 2017, Respondent had a phone conversation with Ruth, and he provided her with available dates for her deposition and the deposition of Dr. Moats. At that time, Respondent knew that the depositions would not proceed because the case had been dismissed.

36. Respondent's statements to Ruth that her deposition and the deposition of Dr. Moats would proceed were false because opposing counsel had not requested her deposition in the dismissed case and Respondent had no intention of deposing Dr. Moats after the dismissal of the 2008 Lawsuit.

37. Respondent knew when he made the statements to Ruth about her deposition and Dr. Moats' deposition that his statements were false because the 2008 Lawsuit had been dismissed and there was no reason for the depositions to proceed.

38. On or about July 20, 2017, Ruth sent a letter to Respondent requesting new dates for the depositions since the ones previously offered had passed.

39. On July 31, 2017, Respondent called Ruth from his cell phone. Respondent told Ruth that he had allowed her case to be dismissed. Respondent told her that he had not slept well for over three years because he had not told her that her case had been dismissed. Respondent admitted that the dismissal of Ruth's second lawsuit was his fault. Respondent and Ruth agreed

to talk again on August 9, 2017 to figure out a way that Respondent could compensate Ruth for the harm he caused.

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

- a. failure to act with reasonable diligence and promptness in representing Ruth by failing to comply with discovery deadlines, failing to respond to the Rule 103(b) Motion, failing to respond to the Rule 219(c) Motion and failing to attend court and allowing the 2008 Lawsuit to be dismissed for want of prosecution, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. failure to keep a client reasonably advised about the status of a matter, by conduct including not telling Ruth that her lawsuit had been dismissed for over six years, in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010); and
- c. conduct involving dishonesty, deceit, or misrepresentation, by conduct including falsely leading Ruth and Dr. Moats to believe that Ruth's medical malpractice lawsuit was pending after the dismissal of the 2008 Lawsuit and by scheduling depositions and requesting information from Ruth, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

COUNT II

(Attempting to Settle Malpractice Claim with an Unrepresented Client – Ruth Cintron)

41. The Administrator realleges paragraphs one through 39 above, as if fully alleged herein.

42. From July 31, 2017 until January 2018, Ruth provided information to Respondent in response to a request from him as part of an effort to decide upon an amount that Respondent could pay to Ruth to settle her malpractice claim against him. During this time, Respondent did not advise Ruth to consult with independent counsel, and Ruth did not consult another attorney regarding the matter.

43. In January 2018, Respondent met with a financial advisor and told Ruth that he needed to gather some documents. In February 2018, Respondent met with an attorney to discuss settling the matter with Ruth. Respondent told Ruth that he was going to confirm with his attorney that he could pay Ruth \$300,000 to settle the malpractice claim.

44. On February 2, 2108, Respondent left a voicemail for Ruth. He told her that he had “good news” and he would call her later. Later that day, Respondent and Ruth spoke, and Respondent told Ruth that he would pay her \$300,000 to settle the malpractice claim. During that telephone call, Respondent told Ruth that he regretted what he had done to her, that she deserved the money for what he had put her through, and that Ruth would have the money in three weeks. Respondent did not pay Ruth the \$300,000.

45. On July 30, 2019, Ruth filed a lawsuit against Respondent alleging that he breached the oral agreement to pay her \$300,000 to avoid a legal malpractice lawsuit.

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

- a. attempting to settle a malpractice claim or potential malpractice claim with an unrepresented client without advising the client in writing that it would be desirable to seek independent legal counsel and giving her a reasonable opportunity to do so, by conduct including negotiating and attempting to make an agreement with Ruth, who was unrepresented, to settle her malpractice claim against him, in violation of Rules 1.8(h)(2) and 8.4(a) of the Illinois Rules of Professional Conduct (2010).

WHEREFORE, the Administrator requests that this matter be referred to a panel of the Hearing Board of the Commission, that a hearing be conducted, and that the Hearing 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
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