

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

In the Matter of:

JOHN M. LISTON

Attorney-Respondent,

No. 6309558.

Commission No. 2025PR00065

COMPLAINT

Lea S. Gutierrez, Administrator of the Attorney Registration and Disciplinary Commission, by her attorney, Morgan B. Handwerker, pursuant to Supreme Court Rule 753(b), complains of Respondent, John M. Liston, who was licensed to practice law in Illinois on November 1, 2012, and alleges that Respondent has engaged in the following conduct which subjects Respondent to discipline pursuant to Supreme Court Rule 770:

(Dishonestly Affixing a Client's Signature on Documents Without Authority, Offering False Evidence, Failing to Correct a Misstatement of Material Fact, and Failing to Diligently Represent a Client)

1. At all times alleged in this complaint, Respondent practiced as a solo practitioner in Morton Grove, sometimes co-counseling matters with another attorney, concentrating primarily in the area of employment law.

2. On or about June 10, 2022, Respondent agreed to represent a physician with the initials "R.K." ("Dr. K") in matters relating to Dr. K's claim of employment discrimination against Dr. K's former employer, Humana. During his career as a physician, Dr. K. never worked for the Cigna Group or Cigna Healthcare.

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3. In the Spring of 2023, Respondent prepared a document to be submitted to the Illinois Department of Human Rights (“IDHR”) entitled “Charge of Discrimination” (“Initial Charge”) on behalf of Dr. K.

4. Under the Illinois Human Rights Act (775 ILCS 5/1-101, *et seq.*) (“the Act”), filing a charge of discrimination with the IDHR is a statutory prerequisite to pursuing a claim of discrimination under the Act. At the time of the events described in this complaint, the statute of limitations for filing a charge of discrimination with the IDHR was 300 days from the date the act of alleged discrimination occurred. 775 ILCS 5/7A-102(A)(1). In his dealings with Dr. K, Respondent learned that Humana’s last alleged act of discrimination against Dr. K occurred on August 8, 2022. Thus, to preserve his right to pursue a claim under the Act, Dr. K’s charge of discrimination against Humana needed to be filed with the IDHR no later than June 4, 2023.

5. In the Initial Charge, Respondent alleged that Dr. K had been discriminated against by “Cinga Group/ Cinga Healthcare (*sic*),” rather than Dr. K’s actual former employer, Humana. Respondent also prepared and attached a verification statement that read as follows:

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true. [735 ILCS 5/1-109]

6. On or around May 1, 2023, Respondent, without authority, signed Dr. K’s name to the verification statement on the Initial Charge document referred to in paragraph five, above. When signing his client’s name, Respondent did not take any action to indicate that the signature had been affixed in a representative capacity, such as by adding the word “By” followed by Respondent’s own signature or placing his initials in parenthesis after the purported signature.

7. On May 2, 2023, without sending a draft of the Initial Charge to Dr. K. for his review and approval, Respondent faxed the Initial Charge containing the purported verification section to the

IDHR, which later docketed an investigation into Dr. K.'s charges. As a result of failing to send Dr. K. the Initial Charge for review and approval, Dr. K. was deprived the opportunity to correct Respondent's error in listing Dr. K.'s former employer as "Cinga Group/ Cinga Healthcare (*sic*)," rather than, Humana. In addition to the Initial Charge, Respondent submitted his appearance on behalf of Dr. K.

8. At no time did Respondent inform anyone at the IDHR that he had signed the Initial Charge or the purported verification clause on behalf of Dr. K.

9. The last date of discrimination alleged by Respondent on behalf of Dr. K in the Initial Charge was August 8, 2022, which was 267 days prior to the filing, and thus within the statute of limitations for claims under the Illinois Human Rights Act.

10. Because the Initial Charge misspelled Dr. K's purported employer's name, the IDHR returned the Initial Charge form to Respondent and requested that he correct any errors and resubmit the Initial Charge. Respondent received the IDHR's request shortly thereafter and understood that the IDHR had given him an opportunity to correct any errors contained in the Initial Charge.

11. In May of 2023, Respondent prepared another document entitled "Charge of Discrimination" (the "Amended Charge") on behalf of Dr. K. which again incorrectly alleged that Dr. K had been discriminated against by Cigna Group/ Cigna Healthcare, rather than Dr. K's actual former employer, Humana. As part of that document, Respondent again included a verification statement that stated:

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true. [735 ILCS 5/1-109]

12. In May of 2023, Respondent, without authority, affixed Dr. K's purported signature to the verification statement referred to in paragraph 11, above. When signing his client's name, Respondent again did not take any action to indicate that the signature had been affixed in a

representative capacity, such as by adding the word “By” followed by Respondent’s own signature or placing his initials in parenthesis after the purported signature.

13. On May 5, 2023, without sending a draft of the Amended Charge to Dr. K. for his review and approval, Respondent submitted the Amended Charge to the IDHR. The Amended Charge contained the purported verification statement referred to in paragraph 11, above. As a result of failing to send Dr. K. the Initial Charge for review and approval, Dr. K. was deprived the opportunity to correct Respondent’s error in listing Dr. K.’s former employer as “Cigna Group/ Cigna Healthcare,” rather than Humana.

14. At no time did Respondent inform anyone at the IDHR that he signed the Amended Charge or the purported verification clause on behalf of Dr. K.

15. Respondent’s affixing of Dr. K.’s purported signatures, as alleged in paragraphs six and 12, above were false because the signatures were not Dr. K.’s, but instead signed by Respondent without Dr. K.’s knowledge or consent. At no time did Respondent notify anyone at the IDHR that he had signed the Amended Charge or the purported verification clause on behalf of Dr. K.

16. Respondent knew that the signatures purporting to be Dr. K.’s, referred to in paragraphs six and 12, above were false, because he knew that he had signed them, not Dr. K., and that he did not have his client’s authority to add the purported signatures. Also, by failing to indicate that the signatures had been made in a representative capacity, Respondent intended for the IDHR to believe that the signatures were Dr. K.’s actual signatures as the aggrieved claimant.

17. Prior to Respondent’s filing of the Initial and Amended Charges, Respondent knew that Dr. K.’s former employer had been Humana, not Cigna. As an experienced employment lawyer, Respondent knew or should have known that failing to list the correct employer on a charge submitted to the IDHR would prevent Dr. K. from successfully pursuing his claims against his actual former employer.

18. On July 13, 2023, Respondent received an email from an Investigator with the IDHR (“IDHR Investigator”) attempting to schedule an interview with Dr. K for July 24, 2023. Shortly thereafter, Respondent forwarded that email to Dr. K. Upon reviewing the July 13, 2023, email from the IDHR Investigator, Dr. K. alerted Respondent that Dr. K.’s employment claim had been asserted against the incorrect company, Cigna.

19. In response, Respondent told Dr. K. that the IDHR had made a docketing error in listing Cigna, and that he would get the IDHR to fix the error.

20. Respondent’s statement to Dr. K regarding IDHR’s purported docketing error, described in paragraph 19, above, was false because Respondent, not IDHR, was responsible for listing the incorrect former employer in both the Initial Charge and the Amended Charge. Additionally, the statement was false because at that point in the investigation it was not possible for the IDHR to amend the charges because by July 2023, Dr. K’s claims against his former employer fell outside the 300-day limitations period.

21. Respondent knew that his statements to Dr. K. about the cause and effect of the purported docketing error, as described in paragraph 19, above, were false because he knew that he, not IDHR, was responsible for listing the incorrect former employer in the Initial and Amended Charges, and because Respondent knew that it was not possible to amend the Initial and Amended Charges to fix the error.

22. Between July 16, 2023, and July 21, 2023, Respondent did not contact Dr. K. to determine whether Dr. K. was available to meet with an IDHR investigator about his employment discrimination claim. During that time, Respondent exchanged the following communications with the IDHR Investigator:

- a. On or about July 16, 2023, Respondent sent correspondence to the IDHR Investigator stating that Dr. K. was “not available” for an interview on July 24, 2023, and requested an “alternate date and time for this interview.”

- b. On July 17, 2023, Respondent emailed the IDHR investigator stating: “I just spoke with my client, and he now informed me that he has just become available at 2 PM on the 24th if that slot is still available for his interview. Please let me know.” Later that day, the IDHR Investigator confirmed the proposed July 24, 2023, interview date and time. Shortly thereafter, Respondent sent an email to the IDHR Investigator stating: “My client is no longer available at 2:00 p.m. on Monday. Can we reschedule the interview?”
- c. On July 21, 2023, Respondent received an email from the IDHR Investigator stating that the next available date for Dr. K.’s interview was July 31. Later that day, Respondent replied stating, he would let the IDHR Investigator know “as soon as I hear from my client” about Dr. K.’s availability for an interview on July 31.

23. The statements in paragraph 22(a) through 22(c), were false because at no time did Respondent ask Dr. K. about his availability for an interview with the IDHR Investigator after July 13, 2023.

24. Respondent knew the statements in paragraph 22(a) through 22(c), above were false because he knew that he had not contacted Dr. K about his availability for an interview with the IDHR Investigator after cancelling the interview previously scheduled for July 24, 2023.

25. In addition to falsely telling the IDHR Investigator that Dr. K. was unavailable for an interview after July 21, 2023, Respondent also failed to take any action to schedule a future date for Dr. K.’s interview.

26. In or around late August or early September of 2023, Dr. K. called Respondent to check on the status of his discrimination claim before the IDHR. At that point, Respondent informed Dr. K. it was too late to fix the IDHR’s docketing mistake and Dr. K. could no longer pursue his employment discrimination claims because the statutory deadline to file such claims had lapsed.

27. The statement in paragraph 26, above, was false because Respondent, not the IDHR, was responsible for listing the incorrect former employer in both the Initial Charge and the Amended Charge

28. Respondent knew that his statements to Dr. K. about the cause and effect of the purported docketing error, as described in paragraph 26, above, were false, because he knew that he, not the IDHR, was responsible for listing the incorrect former employer in the Initial and Amended Charges.

29. Between August 15, 2023, and November 28, 2023, Respondent failed to diligently pursue Dr. K.'s employment discrimination matter by failing to respond to or notify Dr. K. of the following communications Respondent received from the IDHR:

- a. On or about August 15, 2023, Respondent received a letter requesting further information from the IDHR Investigator asking him to produce certain documents on behalf of Dr. K. no later than August 29, 2023. Specifically, the August 15, 2023 Letter stated, "Your failure to provide this information by the above date will be construed against you and will result in a determination being made with the information already on hand." At no time did Respondent produce the additional information requested by the IDHR Investigator.
- b. On or about August 30, 2023, Respondent received a follow-up email from the IDHR Investigator noting Respondent's failure to comply with the request for information contained in the August 13, 2023 Letter and stated that the additional information from Dr. K. was now due by September 7, 2023. At no time did Respondent produce the additional information requested by the IDHR Investigator.
- c. On or about October 10, 2023, Respondent received a letter from the IDHR Investigator notifying him that the IDHR had scheduled a fact-finding conference, pursuant to the version of 775 ILCS 7A- *et seq.* in effect at the time of the events alleged in this complaint, in Dr. K.'s case for December 6, 2023. The October 10, 2023 letter stated that Dr. K and Respondent were required to appear at the December 6, 2023 fact-finding conference, the purpose of which was to determine the merits of Dr. K's case. Finally, the December 6, 2023 letter stated that the Investigator needed to conduct a complainant interview prior to the fact-finding conference. Respondent was required to coordinate this interview with Dr. K.
- d. On October 17, 2023, Respondent received an email from the IDHR Investigator stating that she had been unable to contact him successfully by phone or mail and that if Respondent did not contact her within 30 days of receipt of the October 17,

2023 email, the IDHR Investigator would cancel the fact-finding conference and recommend dismissal of Dr. K.'s Initial and Amended Charges for failure to cooperate with the investigation. At no time did Respondent reply to the October 17, 2023 email from the IDHR Investigator.

30. On November 22, 2023, the IDHR Investigator cancelled the fact-finding conference.

31. As a result of Respondent's failure to cooperate with the IDHR's request for an interview with Dr. K. and to produce certain requested documentation, as set forth in paragraph 29(a) through 29(d) above, on November 28, 2023, the IDHR dismissed Dr. K.'s claim of discrimination based on what it determined was Dr. K.'s failure to cooperate with IDHR's investigation of the claim.

32. Shortly thereafter, the IDHR informed Respondent of Dr. K.'s eligibility to submit a "Request for Review," which allows a complainant to explain to the IDHR why they believe their charge should not have been dismissed. At no time did Respondent file a Request for Review on behalf of Dr. K.

33. 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 a client, by conduct including failing to cooperate with the Illinois Department of Human Rights which resulted in Dr. K.'s complaint being dismissed for failure to proceed and for failing to correct Dr. K.'s employer on the Amended Charge resulting in Dr. K. no longer being able to pursue his case of employment discrimination against Humana, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- b. knowingly making a false statement of law or fact to a tribunal and failing to correct a false statement of material fact or law previously made to the tribunal by the lawyer, by conduct including representing that the Initial Charge and the Amended Charge were genuinely signed by Dr. K. to the Illinois Department of Human Rights when Respondent knew that he had signed the Initial and Amended Charges without Dr. K.'s authority and then failed to correct the false statement and instead submitting and representing that the Initial Charge and the Amended Charge were genuine to the Illinois Department of Human Rights when Respondent knew that he had signed the Initial Charge and the Amended Charge without Dr. K.'s

authority, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct (2010);

- c. offering evidence that the lawyer knows to be false, by conducting including by signing, without authority Dr. K.'s name on verification pages of documents on the Initial Charge and Amended Charge and submitting the same to Illinois Department of Human Rights, in violation of Rule 3.3(a)(3) of the Illinois Rules of Professional Conduct (2010); and
- d. conduct involving dishonesty, fraud, deceit or misrepresentation, by signing, without authority Dr. K.'s name on verification pages of documents submitted to the Illinois Department of Human Rights despite knowing they were not Dr. K's signature in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct

WHEREFORE, the Administrator respectfully 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 and law, and a recommendation for such discipline as is warranted.

Respectfully submitted,

Lea S. Gutierrez, Administrator
Attorney Registration and
Disciplinary Commission

By: /s/ Morgan B. Handwerker
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