

SUPREME COURT OF ARIZONA

In the Matter of the Application ) Arizona Supreme Court  
for Reinstatement of a Suspended ) No. SB-16-0029-R  
Member of the State Bar of )  
Arizona )  
 ) Office of the Presiding  
THEODORE C. ABRAMS, ) Disciplinary Judge  
Attorney No. 13135 ) No. PDJ20159114  
 )  
 )  
Applicant. ) **FILED 12/13/2016**  
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O R D E R

The Court has received the Report and Recommendation of the disciplinary hearing panel filed April 8, 2016, recommending that the application for reinstatement filed by Applicant Theodore C. Abrams be denied. Upon motion, the Court granted permission for Abrams to file a response to the Report and Recommendation and provided the State Bar an opportunity to file a reply. The Court timely received and has considered both the response and reply.

We accept a hearing panel's factual findings unless they are clearly erroneous. *In re Johnson*, 231 Ariz. 556, 557 ¶ 1, 298 P.3d 904, 905 (2013). As detailed below, the Court finds that several of the hearing panel's factual findings were clearly erroneous because they were not supported by the evidence. In addition, it is not clear from its report that the hearing panel fully considered Abrams' evidence of rehabilitation from a weakness that caused his misconduct toward women and his abuse of office. Accordingly, the matter is remanded to the hearing panel for reconsideration.

This Court previously suspended Abrams' license to practice law

in this state for two years, effective June 1, 2011. *In re Abrams*, 227 Ariz. 248, 257 P.3d 167 (2011). This is Abrams' second application for reinstatement. Although his first application was denied, *In the Matter of Abrams*, SB-14-0017-R, the hearing panel's Report and Recommendation included certain findings of fact that supported Abrams' application:

As to [Applicant's] substance abuse and conduct with attorney A, he has identified his weaknesses, and satisfactorily proved rehabilitation (i.e., identification and overcoming) of those weaknesses. These identified weaknesses are his substance abuse and personality disorders.

. . .

**Substance Abuse Rehabilitation**

The record shows substantial proof that Mr. Abrams has recovered through the use of various described safeguards from his substance abuse problems and is properly treating his mood disorders. Furthermore, Mr. Abrams has established a causal nexus between the substance abuse and some of the ethical conduct violations.

. . .

. . . In sum, Abrams has created and maintained an environment that provides multiple safeguards against substance abuse, and the adequacy of these safeguards is evidence by now more than two years of continued sobriety.

Accordingly, we find clear and convincing evidence that Mr. Abrams has identified one of the major weaknesses, substance abuse, which fueled a psychological disorder enabling some of his misconduct.

In addition, the panel found that Abrams presented more than ample proof of his compliance with the terms of his probation, legal competence, fitness to practice law, character and conduct prior to discipline, and conduct following discipline. Report and Recommendation filed April 1, 2014, at 8, 10-11 and 13.

On that first application, however, the hearing panel found that

Abrams did not identify a weakness that caused his sexual harassment and retaliation toward Attorney B (and to a lesser extent his misconduct toward Attorney C), or his abuse of judicial office. Nor did it find Abrams had presented evidence of a causal connection between his former substance abuse and that misconduct. The panel found that "Mr. Abrams ha[d] not accepted responsibility for his sexual harassment and retaliation." *Id.* at 20.

By order dated July 11, 2014, this Court considered the hearing panel's Report and Recommendation and dismissed the first application. That disposition of the matter established the finality of that particular Report and Recommendation. The clear import of our order was that the hearing panel's 2014 report was a final decision and conclusive as to all facts that were found at that time. The finality of the action by the hearing panel in 2014 is the law of the case on this current review. *See Short v. Dewald*, 226 Ariz. 88, 93 ¶ 21, 244 P.3d 92, 97 (App. 2010) (a judgment dismissing an action may be sufficiently final for purposes of issue preclusion); Restatement (Second) of Judgments § 13 (1983), and Comment (g).

Consequently, the issues in this second application for reinstatement are limited to: (1) whether Abrams identified a weakness that caused his sexual harassment and retaliation toward female attorneys, or his abuse of office; and (2) whether he has provided clear and convincing evidence of his rehabilitation from that weakness.

Within that context, consideration of Abrams' sustained remission from opioid addiction is relevant to those two issues, but his rehabilitation may not be reconsidered absent substantial evidence of repudiation of his treatment subsequent to July 11, 2014. The record before the Court does not reflect any such repudiation.

For example, at page 11 of its Report and Recommendation, the panel was concerned why Abrams tested positive for metabolites of opiates on October 12, 2015. The record shows that Abrams' long-term treatment for opioid addiction includes the prescriptive use of Suboxone to inhibit cravings. He testified he had run out of his Suboxone prescription and could not obtain a "bridge" from any of his doctors until he could return from his work out of town and have it refilled after an office visit. He explained he used cough syrup and an opioid pain pill left over from a 2012 medical treatment to maintain equilibrium and subdue his withdrawal symptoms.

The panel also referenced a letter dated August 8, 2013, in which Dr. Larry Onate, Abrams' previous doctor, stated he had last seen Abrams on September 11, 2012, but also stated that Abrams had not been taking Suboxone for treatment of opioid dependence "for over a month" (probably as of September 2012). That letter refers to activity preceding July 11, 2014. It is also contradicted by records of Abrams' current treating doctor, psychiatrist Dr. Bryan McCabe, who first saw him on July 17, 2015. On that date, Dr. McCabe observed that Abrams was "on stable dose of suboxone for last 4 yrs."

State Bar's Exhibit No. 14 at SBA0191. During that visit, a drug screen tested positive for "bup" (a generic term for Suboxone) and "oxy metab c/w/h/o codeine use." *Id.* at SBA0197-99. Medical records of Dr. Galasso dated July 8, 2015, show that he prescribed an antibiotic for pneumonia and "Robitussin AC Elixir for cough." State Bar's Exhibit 15 at SBA0211-12. Abrams provided the prescription for the cough syrup to Dr. McCabe during a visit on October 12, 2015, and reported using some to "get by" when out of Suboxone. State Bar's Exhibit 14 at SBA0197-99.

Abrams' treating psychologist, Dr. George Goldman, testified at the hearing to his diagnosis of Abrams' condition as opiate addiction in remission, adjustment disorder, and anxiety. He further testified that a "brief use" of an oxy drug did not qualify as a "slip" in Abrams' recovery from opioid addiction. He said that to call this "using" would be an overstatement, and the matter would be something they would discuss at their next counseling session.

The panel's report is also contradictory. The panel questions at page 12, "why Mr. Abrams kept a bottle of the drug he is addicted to within their home without his wife's knowledge." But it stated on page 11 that Abrams and his wife testified "they kept in their home leftover oxycodone from 2012." Mrs. Abrams testified that, in 2012, the doctor treating Abrams for sacroiliitis prescribed the pain medication, which she managed for her husband, and that the doctor knew of Abrams' addiction. She also testified that Abrams told her

what he did when he used previously prescribed medications to minimize his October 2015 withdrawal symptoms. The record does not support the panel's speculation that Abrams kept opioid drugs in their home without his wife's knowledge and that his conduct undermined his rehabilitation.

The panel also was concerned with Abrams' possible alcohol abuse, but its concern is not supported by the record. Dr. Goldman testified that he did not explore alcohol addiction with Abrams because Abrams said he was sober, and he did not think Abrams had been dishonest by failing to mention his use of alcohol. Both doctor and patient stated that they concentrated on treatment for opioid addiction and mood disorder relating to misconduct toward women and abuse of office. Dr. Goldman made no observations consistent with alcohol abuse by Abrams.

Witnesses testified that Abrams participated in social events, but he did not consume alcohol. Further, questions at the hearing about past alcohol use were based on medical records preceding July 11, 2014. In addition, Abrams testified that if the State Bar wanted to require him to stop drinking alcohol completely as a condition of reinstatement, he would have no difficulty doing so.

The panel also stated, "Neither the records of Dr. Goldman, testimony at the hearing, nor records of Mr. Abrams' present treating physicians offer us any meaningful insight into what causal weakness is now claimed nor whether the weakness was overcome." Report and

Recommendation at 15. This statement was based in part on the panel's evaluation of Dr. Goldman's testimony as "misleading" because he did not discuss drinking with Abrams. *Id.* at 13. But alcohol abuse was not an issue during Abrams' disciplinary proceedings, his MAP evaluation and voluntary 2-year contract (which included substance screenings), or the first application for reinstatement.

Without any objection to Dr. Goldman's qualifications as a treating physician or expert, the hearing panel "found the testimony of Dr. Goldman unreasonable when considered in the light of the evidence before us." Report and Recommendation at 14. It "found his testimony to be little more than an optimistic hunch," *id.*, and it viewed his records as simply "progress notes," stating that,

They appear to substantially be the statements of Mr. Abrams written down by him [Dr. Goldman] as a form of supporting therapy. We searched for statements identifying the weakness identified by Mr. Abrams causing his unethical behavior or statements or testimony to explain either the tools or steps taken to overcome any weakness. We could not find any.

*Id.* at 15.

However, the record includes substantial probative evidence regarding Abrams' rehabilitation from his misconduct toward women and abuse of office since July 11, 2014. Notably, Abrams has engaged in regular treatment with a psychiatrist and a psychologist for over two years following the dismissal of his first application for reinstatement.

Dr. Goldman testified that he had been treating Abrams in 2-week sessions, had read the disciplinary opinion filed by this Court, and

had reviewed the deposition taken of Abrams in connection with Attorney B's pending sexual harassment litigation. They discussed his substance abuse and inappropriate behavior, which Abrams described as "atrocious and reprehensible." The doctor's goal was to evaluate if Abrams presented as accountable and responsible, or if he attempted to lay blame elsewhere. He found that Abrams was not minimizing or blaming, not even slightly. When asked how he could tell if Abrams was manipulating him, Dr. Goldman responded that his experience and training led him to conclude that Abrams was not just trying to get reinstated. He explained that Abrams knew what he wanted to discuss, so the doctor first allowed him to go through his history in detail. Then they spoke about the present and future, how to monitor impulses, and how to keep from relapsing. They discussed Abrams' past substance abuse, but their treatment did not include testing for drugs. Abrams told Dr. Goldman that he regularly attended a 12-step program and acted accordingly. The doctor found no red flags regarding Abrams' behavior, as his patient consistently attended therapy sessions and never identified himself for alcoholism.

Dr. Goldman, who has experience counseling other professionals, acknowledged that Abrams had self-medicated when he ran out of Suboxone, but Dr. Goldman was not concerned about a relapse. Regarding Abrams' past abuse of power as a judge, Dr. Goldman opined that Abrams' conduct was directly related to oxy abuse. He stated

that, if the addiction is addressed, there is significant progress toward solving an abuse of power problem, and that further therapy would be helpful, but not necessarily required of Abrams.

Dr. McCabe's records show continuity and progress in treatment for opioid addiction, including drug test records showing sustained absence of opioids or their metabolites except for two isolated, explained instances. Though the State Bar had noticed Dr. McCabe as a witness for the hearing, he was not called to present his testimony.

The record also contains evidence to support the insights that Abrams has gained into his own behavior. In his application, Abrams stated at page 7, "I understand now that my impulse controls were affected by my depression, opiate addiction, and near death experience." Abrams also referred to a mood disorder that was undiagnosed and untreated until 2011, a condition that the panel emphasized was not attributed by Dr. Goldman as a cause of Abrams' misconduct. But this observation by the hearing panel is not adequately supported by the record. The record contains Dr. Goldman's diagnosis that includes an adjustment disorder and a description of Abrams' treatment that includes exploring (1) what this patient has learned through years of treatment, (2) whether he appreciates consequences of past behaviors described in this Court's written opinion imposing discipline, (3) whether this patient is direct and accountable in his communications, and (4) his plans for

the future. Dr. Goldman testified that he does not prescribe medications, but knows that Abrams' treating psychiatrist prescribes Suboxone and mood stabilizers.

Abrams testified about his admittedly taking advantage of being a judge, as compared with his behavior now. He attributed his misconduct toward female attorneys and his misuse of power to an out-of-control ego, a fear for his mortality, and an inability to ask for help. He said as an addict he would become angry or petulant if he did not get what he wanted, a characteristic that Abrams described as one of "12-step's identifiers" for re-addiction. When abusing opioids, he testified, he would take handfuls of pills at a time. He distinguished that prior behavior from his conduct attempting to offset his withdrawal symptoms (insomnia, anxiety, and digestive problems) when his Suboxone prescription was exhausted for five days. He admitted he had not apologized to Attorneys B or C, and he expressed regret, but no evidence appears in the record whether such an apology would be constructive or counterproductive. Abrams testified he had already apologized to Attorney A. While the hearing panel commented that Abrams stated he had "sexually harassed" only two women, not acknowledging Attorney C, the record contains no evidence that he "sexually harassed" Attorney A, making his testimony numerically correct.

Upon consideration of the Report and Recommendation filed April 8, 2016, the response filed by Applicant Abrams, the reply filed by

the State Bar, and the record below,

**IT IS ORDERED** remanding this matter to the panel for reconsideration in light of this order. The panel may reopen the proceeding and accept additional evidence if it sees fit.

DATED this 13<sup>th</sup> day of December, 2016.

\_\_\_\_\_/s/\_\_\_\_\_  
SCOTT BALES  
Chief Justice

TO:

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