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DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY *M. Smith*

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

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3	IN THE MATTER OF A SUSPENDED MEMBER)	No. 04-1106
4	OF THE STATE BAR OF ARIZONA,)	
5	LISE R. WITT,)	
6	Bar No. 013118)	DISCIPLINARY COMMISSION
7	RESPONDENT.)	REPORT

8 This matter originally came before the Disciplinary Commission of the Supreme
 9 Court of Arizona on June 10, 2006, pursuant to Rule 58, Ariz. R Sup. Ct., for consideration
 10 of the Hearing Officer's Report filed April 6, 2006, recommending a two year and six month
 11 suspension retroactive to January 27, 2005, two years of probation upon reinstatement with
 12 terms and conditions to be determined upon reinstatement, and costs. The State Bar filed an
 13 objection and requested oral argument. Respondent and Counsel for the State Bar were
 14 present.

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 16 The State Bar argues that the Hearing Officer's Report omitted uncontested facts
 17 from the record that are relevant to Respondent's state of mind, the mitigating factor of
 18 remorse, and her efforts of rehabilitation. The record supports that Respondent stated to a
 19 friend that she was innocent and framed. Respondent also testified at the hearing that her
 20 conduct in committing the crime was negligent and she engaged in such conduct because her
 21 co-defendant family members instructed her to do so.

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 23 The State Bar asserts that the Hearing Officer erroneously failed to find that
 24 Respondent used her skill as a lawyer to assist in the Medicare fraud and failed to find the
 25 presence of aggravating factor 9.22(c) pattern of misconduct. The State Bar argues that
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1 Respondent incorporated and acted as a statutory agent for the straw corporation that was
2 established for the sole purpose of generating fraudulent expenses to Medicare. Respondent
3 engaged in numerous dishonest acts in support of the fraudulent scheme that resulted in her
4 felony conviction, and she has not demonstrated the level of mitigation rehabilitation
5 established in *Matter of Picolli*, SB-05-0144-D (2005) and *Matter of Scholl*, 200 Ariz. 222,
6 25 P.3d 710 (2001).

7 The State Bar further argues that a two years and six months suspension and
8 probation upon reinstatement as recommended by the Hearing Officer is inadequate based
9 on a proportionality analysis of previous cases involving similar misconduct and application
10 of the American Bar Association *Standards for Imposing Lawyer Discipline (Standards)*.
11 The State Bar asserts that this matter more analogous to *Matter of Arrotta*, 208 Ariz. 509, 96
12 P.3d 213 (2004),¹ and disbarment is clearly the appropriate sanction in order to protect the
13 public and the integrity of the legal profession.
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15 In response, Respondent argues that the Hearing Officer had sufficient evidence to
16 support the mitigating factor of remorse and that her mental state supports the recommended
17 sanction of suspension. Respondent further argues that the Hearing Officer appropriately
18 found that she did not use her skills to assist the Medicare fraud and that aggravating factor
19 9.22(c) was not present.
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21 Respondent asserts that her misconduct was merely negligent and her negligence was
22 based on her depression. Respondent states that when she is depressed, she does not
23 consider the consequences of her actions and she is easily influenced. Respondent further
24 states that she has overcome her health problems by exercising and attending church and
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bible study classes on a regular basis. Respondent maintains that she has not sought professional treatment for her depression because it never made her homicidal, suicidal, or delusional and that she has demonstrated interim rehabilitation by not becoming involved in more fraudulent schemes. See Commission transcript, pp. 12-14.

Respondent contends her transgressions are most analogous to *Matter of Scholl*, 200 Ariz. 222, 25 P.3d 710 (2001), and like Scholl, she has overcome the problems that contributed to her misconduct. Respondent states that if the integrity to the profession was not harmed by the highly publicized misconduct that occurred in *Scholl*, there also was no harm here, because she is "virtually anonymous" and she was not involved with the legal system at the time of her misconduct. See Commission transcript, pp. 15-16. Respondent requests the Commission adopt the Hearing Officer's recommendation for a two year and six month suspension and probation upon reinstatement.

Decision

The eight members² of the Disciplinary Commission unanimously adopt the majority of the Hearing Officer's findings of fact and conclusions of law with some exceptions, and modify *de novo* the recommended sanction to reflect disbarment and costs of these disciplinary proceedings.

Discussion

The Disciplinary Commission's standard of review is set forth in Rule 58(b), which states that it applies a clearly erroneous standard to findings and reviews questions of law *de*

¹ Arrotta was convicted of multiple felonies including two counts of Mail Fraud, Bribery, Fraudulent Schemes and Practices, and Disclosure of confidential information and consented to Disbarment for violating ER 8.4 and Rule 51, Ariz. R. Sup. Ct.

² Commissioner Nelson did not participate in these proceedings. Commissioner Osborne concurs. See concurring opinion listed below.

1 *novo*. The Commission always gives great deference to the Hearing Officer's Report and
2 recommendation. *Matter of Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1989).

3 The Commission agrees with the Hearing Officer that clear and convincing evidence
4 that Respondent violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 8.4(b), 8.4(c) and Rule
5 53(h). Respondent engaged in fraudulent conduct over a four year period involving theft of
6 public monies by fraudulently billing Medicare for services not provided.

7 In determining the appropriate sanction, our Supreme Court considers the ABA
8 *Standards for Imposing Lawyer Sanctions* ("Standards") a suitable guideline. *In re Kaplan*,
9 179 Ariz. 175, 877 P.2d 274 (1994). The Supreme Court and the Disciplinary Commission
10 are consistent in utilizing the *Standards* to determine appropriate sanctions for attorney
11 discipline. In imposing a sanction after a finding of misconduct, consideration is given to
12 the duty violated, the lawyer's mental state, the actual or potential injury caused by the
13 misconduct. *Standard 5.1, Failure to Maintain Personal Integrity* provides that absent
14 aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the
15 following sanctions are generally appropriate in cases involving commission of a criminal
16 act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in
17 other respects, or in cases with conduct involving dishonesty, fraud deceit, or
18 misrepresentation, *Standard 5.11* specifically provides that:

19 Disbarment is generally appropriate when:

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21 (a) a lawyer engages in serious criminal conduct, a necessary
22 element of which includes intentional interference with the
23 administration of justice, false swearing, misrepresentation,
24 fraud, extortion, misappropriation, or theft; or the sale,
25 distribution or importation of controlled substances; or the
26 intentional killing of another; or an attempt or conspiracy or
solicitation of another to commit any of these offenses; or

1 (b) a lawyer engages in any intentional conduct involving
2 dishonesty, fraud, deceit, or misrepresentation that seriously
3 adversely reflects on the lawyer's fitness to practice.

4 The Hearing Officer, as well as the Commission, determined that disbarment was the
5 presumptive sanction for Respondent's particular misconduct. Respondent incorporated and
6 acted as the statutory agent of Medbill Systems, Inc. which was created for the sole purpose
7 of generating false expenses reimbursable under Medicare's established cost reimbursement
8 system. Respondent was ultimately convicted of a of a Class D felony, for violating Title 18
9 U.S.C § 1347, Health Care Fraud and was sentenced to three years of probation with six
10 months of home detention, a \$100.00 special assessment, and a \$5,000.00 fine. In addition,
11 Respondent paid \$125,000.00 to the government in lieu of a restitution order.

12 Having concluded that disbarment is the presumptive sanction, the Commission
13 reviewed *Standards* 9.22 and 9.32, aggravating and mitigating factors respectively.

14 The Commission agrees with the Hearing Officer that aggravating factor 9.22(b)
15 dishonest pattern of misconduct is present. In addition, the Commission finds *de novo* that
16 aggravating factor 9.22(c) patter of misconduct is also supported by the record. The
17 evidence shows that over a four year period Respondent engaged in a pattern of misconduct
18 by regularly signing off on fraudulent statements.

19 The Hearing Officer also found that mitigating factors 9.32(a) absence of a prior
20 disciplinary record, 9.32(c) personal or emotional problems,³ 9.32(e) full and free disclosure
21 to disciplinary board or cooperative attitude toward proceedings, 9.32(g) character and
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26 ³ Respondent testified that she experienced many physical health problems including a predisposition to
depression, childbirth, burst ovarian cyst, severe allergies, septic sickness, lingering side effects from gall
bladder removal, and weight gain. Hearing Officer Report, p. 10.

1 reputation, 9.32(k) other penalties and sanctions, and 9.32(l) remorse⁴ are supported by the
2 record. However, given the absence of supporting evidence and the absence of any evidence
3 of a causal nexus other than Respondent's self serving testimony, the Commission finds it
4 clearly erroneous to conclude that Respondent's personal and emotional problems are a
5 mitigating factor. Case precedent has established that self serving testimony is not enough
6 to prove personal or emotional problems. *Matter of Augenstein*, 178 Ariz. 133, 137, 871
7 P.2d 254 (1994). Overall, the Commission finds Respondent's evidence of mitigation to be
8 insufficient to justify a reduction in the presumptive sanction.

9 The Supreme Court has held in order to achieve proportionality when imposing
10 discipline, the discipline in each situation must be tailored to the individual facts of the case
11 in order to achieve the purposes of discipline. *Matter of Wines*, 135 Ariz. 203, 660 P.2d 454
12 (1983) and *Matter of Wolfram*, 174 Ariz.49, 847 P.2d 94 (1993). Proportionality is an
13 extremely important component in the attorney discipline system of because it is imperative
14 that the sanctions imposed deter other lawyers and instill public confidence in the integrity
15 of the legal system and the profession's ability to self regulate.

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17 The Hearing Officer considered the following recent cases in considering an
18 appropriate sanction:

19 In *Matter of Scholl*, 200 Ariz. 222, 25 P.3d 710 (2001), a six months suspension was
20 imposed for violating ER 8.4(b) and SCR 51(a). Scholl was convicted in the federal district
21 court in the District of Arizona for four (4) violations of Title 26, U.S.C. § 7206(1), making
22 and subscribing a false income tax return, a felony, and three (3) violations of Title 31.

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25 ⁴ The Hearing Officer found that Respondent may not have totally accepted responsibility for her
26 actions and that her remorse is tempered by noting difficulties with family members and the
insurance company's strict auditing procedures. See Hearing Officer's Report, p. 11, finding of fact
55.

1 U.S.C. § 5324 and § 5322, structuring currency transactions, felony offenses. Respondent
2 was sentenced to five (5) years of probation. The Commission finds that *Scholl* is
3 distinguished based on the compelling evidence of rehabilitation that was present. Here, no
4 such evidence is present.

5 In *Matter of Piccioli*, SB-05-0144-D (2005), an agreement for a two year and six
6 month suspension, and two years of probation upon reinstatement was accepted for violating
7 ER 8.4(b) and (c). The Commission finds that *Picolli* is distinguished from the instant
8 matter in that *Picolli*'s misconduct was an isolated instance of fraud and he had a minimal
9 role in perpetrating the fraud. Here, Respondent engaged in a repeated pattern of fraud over
10 an extended period of time and was directly and personally involved in establishing and
11 executing the fraudulent scheme.

12 Conclusion

13 One purpose of lawyer discipline is to deter the respondent and other attorneys from
14 engaging in similar unethical conduct. *In re Kleindienst*, 132 Ariz. 95, 644 P.2d 249 (1982).
15 Another purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180
16 Ariz. 20, 29, 881 P.2d, 352, 362 (1994). In addition, the sanction that we impose must help
17 maintain the integrity of the legal system. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d
18 1315, 1320 (1993).

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20 Therefore, based on the findings and conclusions, application of the *Standards* and a
21 proportionality analysis, the Disciplinary Commission recommends disbarment and costs of
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these disciplinary proceedings.

1 RESPECTFULLY SUBMITTED this 21st day of July, 2006.

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4 Barbara A. Atwood

5 Barbara A. Atwood, Chair
6 Disciplinary Commission

7 **Commissioner Osborne concurring:**

8 Our duty as a Commission is to recommend sanctions that protect the public and
9 assure that public confidence is met. I agree with the majority that in light of Respondent's
10 serious misconduct involving a significant fraudulent scheme against the government and
11 the theft of public monies without substantial and compelling mitigation warrants nothing
12 less than disbarment. Although the Hearing Officer found that "Respondent acted as a
13 lawyer to assist the Medicare fraud, she did not abuse her position as a lawyer to commit the
14 wrongful acts," it is important to note that the record supports that Respondent drafted
15 documents establishing the straw corporation in 1996, approximately one year *before* she
16 became an inactive member of the State Bar in 1977.

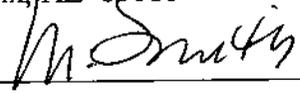
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18 Original filed with the Disciplinary Clerk
19 this 21st day of July, 2006.

20 Copy of the foregoing mailed
21 this 21st day of July, 2006, to:

22 Mark S. Sifferman
23 Hearing Officer 9J
24 *Norling, Kolsrud, Sifferman & Davis, P.L.C.*
16427 North Scottsdale Road, Suite 210
25 Scottsdale, AZ 85254
26

Lise R. Witt
Respondent
1 2323 E. Minton
2 Mesa, AZ 85213

3 Loren J. Braud
4 Senior Bar Counsel
4201 North 24th Street, Suite 200
5 Phoenix, AZ 85016

6 by: 

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