

Sep 09 2020

Disciplinary
Board

Docket # 002

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

TYLER S. WEAVER,
Lawyer (Bar No. 29413).

Proceeding No.

ODC File No. 18-00496

STIPULATION TO TWO REPRIMANDS

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Two Reprimands is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through Managing Disciplinary Counsel Joanne S. Abelson, Respondent's counsel Christopher Ray Hardman, and Respondent lawyer Tyler S. Weaver.

Respondent understands that he is entitled under the ELC to a hearing, to present exhibits and witnesses on his behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that he is entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court. Respondent further understands that a hearing and appeal could result in an outcome more favorable or less favorable to him. Respondent chooses to resolve this proceeding now by entering into the following stipulation to facts, misconduct, and sanction to avoid the risk, time,

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1 and expense attendant to further proceedings.

2 I. ADMISSION TO PRACTICE

3 1. Respondent was admitted to practice law in the State of Washington on November 12,
4 1999.

5 II. STIPULATED FACTS

6 Background

7 2. From 2001 to 2018, Respondent was a lawyer with a Seattle law firm specializing in
8 class action lawsuits (the firm).

9 3. In 2011, the firm filed actions on behalf of more than 50 plaintiffs against multiple
10 drug manufacturers alleging that the plaintiffs suffered injuries because their mothers ingested the
11 drug Thalidomide while pregnant. The suits were consolidated in federal district court.

12 4. Respondent was not involved with the initiation of these lawsuits. He became
13 involved in 2014, when discovery demands were increasing.

14 5. Shortly thereafter, a Special Master ordered the firm to review its cases to determine
15 whether any of the cases should be dismissed with prejudice due to insufficient evidence of
16 causation. Respondent was directed to work with the firm's expert to determine which cases
17 could move forward and to communicate with the clients.

18 6. The general procedure was that Respondent sent medical records to the expert for the
19 expert's review, spoke with the expert after the expert reviewed the records and examined the
20 plaintiff, and reviewed any reports from the expert. Based on the expert's opinion as to whether
21 or to what extent causation for the injuries could be proven to be based on Thalidomide exposure,
22 Respondent made a recommendation to the firm as to whether it should go forward with that
23 plaintiff's case, dismiss it, or withdraw as counsel.

1 **Client TB**

2 7. Respondent spoke with the expert about TB on August 18, 2014, after the expert
3 reviewed her medical records but had not yet examined her. According to Respondent, the expert
4 believed it would be very hard for him to reach an opinion about causation for several reasons,
5 which he explained to Respondent.

6 8. Respondent spoke to the expert again on August 20, 2014, after the expert had
7 examined TB, and the expert's opinion had not changed.

8 9. Based on the expert's inability to form an opinion to a reasonable degree of medical
9 certainty that TB's injuries were caused by Thalidomide and other facts of the case, Respondent
10 advised the firm that it could not go forward with TB's case.

11 10. Respondent spoke to the expert once more on the morning to August 21, 2014 to see
12 if his views had changed, but they had not.

13 11. Respondent then telephoned TB to tell her that he did not believe the firm had grounds
14 to pursue her case and would have to dismiss it.

15 12. Respondent felt terrible for TB about the outcome.

16 13. Respondent spoke to TB again the morning of August 22, 2014. In that call, TB told
17 him that she did not want to dismiss her case. He advised her that the firm would have to withdraw
18 as her counsel based on certain facts about her case (which he identified) and that the expert could
19 not give a strong enough opinion to overcome these issues.

20 14. Also on August 22, 2014, the expert emailed his report to Respondent. Among other
21 things, the report discussed a study in which the author examined patients with injuries similar to
22 TB's. The expert opined that, "These results [of the study] suggest that [TB's] defects would fall
23 into the non-thalidomide group."

1 15. But the paragraph in which the expert stated this opinion continued with the following
2 three sentences

3 However, [the study's] Materials and Methods section indicates that all the cases
4 he examined, from the Princess Margaret Rose Orthopedic Hospital, Edinburgh,
5 had been pre-screened as thalidomide vs non-thalidomide cases and does not make
6 it clear that the pre-screening was not biased as to assignment of thalidomide
7 exposure vs non-exposure. I have seen evidence from early papers suggesting that
8 the type of limb defect itself was used as a determining factor for listing limb
9 defects as thalidomide vs non-thalidomide. Therefore, if clear thalidomide
10 exposure is established in the present case, it is my opinion that [TB's] defects,
11 which are femoral-fibular-ulnar, are still consistent with thalidomide exposure.

12 16. Respondent thought these sentences were poorly worded and would confuse TB. In
13 particular, he was concerned that the last sentence, which began with the phrase, "if clear
14 thalidomide exposure is established in the present case," was particularly confusing because no
15 such exposure had been established.

16 17. As a result, that same day, Respondent deleted these three sentences from the report
17 and sent the altered report to TB with a cover email stating, "here is [the expert's] report after
18 seeing you."

19 18. Respondent sent TB the altered report after she had advised him that she would not
20 agree to dismiss her case.

21 19. On August 25, 2014, the firm filed a motion to withdraw as TB's counsel.

22 **Client DC**

23 20. On August 3, 2014 the expert sent Respondent a report about DC after the expert's
24 review of DC's medical records.

25 21. The expert examined DC on August 13, 2014, and spoke with Respondent that day or
26 the next. The expert told Respondent that he could not reach an opinion to a reasonable degree
27 of medical certainty that DC's condition was caused by Thalidomide.

1 22. Based on this opinion, on August 14, 2014 Respondent telephoned DC to tell her that
2 the firm did not have grounds to pursue her case because of lack of proof of causation.

3 23. DC agreed to dismiss her case.

4 24. On August 15, 2014, the firm filed a stipulation to voluntary dismissal, which the court
5 granted on shortly thereafter.

6 25. On August 22, 2014, DC contacted the firm and asked for a copy of the expert's report.

7 26. Respondent obtained the report from the expert. It contained the following paragraph:

8 The presence of tiny digits with nails at the distal end of the foot argues against
9 amniotic bands in this case. Bands tend to amputate all distal structures, especially
10 including the nail beds of digits. Her eye defects may have been congenital, but that
11 is not clear. She may also have scoliosis and an irregular shaped uterus. I was unable
12 to confirm either of these alleged defects. If either or both of these represent
13 congenital defects, then they must be considered in terms of probability. Scoliosis
14 was among the first defects identified as being associated with thalidomide
15 embryopathy (Lenz and Knapp, German Medical Monthly 7, 253-258, 1962). It is
16 also fairly common in the general population (about 2.3%). Uterine defects, which
17 are associated with thalidomide exposure, are also fairly common in the general
18 population, occurring at a rate of about 1/10 births each (Saravolos and Cocksedge,
19 Hum. Repro. Update 14, 415-429, 2008). If either of these defects is congenital in
20 this case, the probability of seeing either of them together with distal truncation of
21 the foot becomes about 1:1,200,000 births.

22 27. Respondent believed that the last sentence of this paragraph was poorly worded and
23 would confuse DC, so he deleted it.

24 28. In response to DC's request for the report, Respondent sent a copy of the altered report
to one of the firm's paralegals, whom he expected would send it to DC. But, apparently through
an oversight, the report was never sent to DC.

Respondent's 2017 testimony in federal court and subsequent events

29. In September 2017, the Special Master held a hearing on the firm's motions to
withdraw as counsel for five clients, including TB, who appeared and was represented by pro
bono counsel.

1 30. Among other things, Respondent testified as to the procedure the firm used to
2 determine whether to go forward with the clients' cases and why the firm moved to withdraw in
3 TB's case.

4 31. Respondent also testified that he mailed TB the report on which the firm had made its
5 determination, identifying the altered version of the report as the one that the firm had received.

6 32. This statement was not accurate. Nonetheless, on the basis of this testimony, the
7 altered report was placed into evidence as the version that the firm had received.

8 33. At the time Respondent gave his testimony, he states that he did not recall that he had
9 altered the report three years prior, and that he mistakenly identified the altered report as the one
10 he had received. ODC believes it cannot prove that Respondent knew he was testifying falsely.

11 34. Later, after Respondent reviewed documents that he was not previously aware of, he
12 began to have doubts about the timeline to which he testified, specifically, whether he had
13 received the written report from the expert before or after he spoke to TB. He did an internal
14 investigation and, in October 2017, determined that he had been mistaken about the timeline. He
15 told the lawyer who was representing the firm in the federal litigation that he (Respondent) would
16 need to correct his testimony.

17 35. In November 2017, after doing additional searching, Respondent discovered that the
18 version of the expert's report that he had testified about had been altered. He advised the firm's
19 counsel of this as well. Through examining the metatdata, Respondent realized that he was the
20 person who had made the alterations to the TB report, which he also disclosed to the firm.

21 36. Through further examination Respondent discovered that he also had altered the DC
22 report, which he disclosed as well.

23 37. The firm ascertained through an outside expert that the altered DC report was not sent

1 to her.

2 38. If Respondent had not disclosed that the reports were altered, it is unlikely that anyone
3 would have discovered it.

4 39. The firm's counsel in the federal litigation provided the information about the altered
5 reports to the court, which resulted in additional court proceedings in a case that already was
6 complicated and protracted.

7 40. In February 2018, before taking any testimony, the Special Master wrote a report that
8 was highly critical of Respondent's conduct. In the report, the Special Master stated that
9 Respondent "has given every . . . client or former client [of the firm] - every [TB] or [DC] -
10 reason to worry about her lawyers' honesty, competency and fidelity."

11 41. In May 2019, the Special Master held hearing was held at which Respondent testified
12 to these events. As of the date of this stipulation, the Special Master has not issued any findings
13 subsequent to this testimony. Meanwhile, the firm's motions to withdraw remain pending.

14 42. Respondent and the firm have parted ways.

15 43. Respondent's alterations of the expert's reports did not affect the firm's assessment
16 about whether it could proceed in good faith with TB's or DC's cases.

17 **III. STIPULATION TO MISCONDUCT**

18 44. By altering the expert's report and sending the altered version to TB while falsely
19 describing it to her as genuine, Respondent violated RPC 8.4(c).

20 45. By testifying that the altered version of the expert's report was the one that the firm
21 had received from the expert when such was not the case, Respondent violated RPC 8.4(c).

22 **IV. PRIOR DISCIPLINE**

23 46. Respondent has no prior discipline.

1 **V. APPLICATION OF ABA STANDARDS**

2 47. The following American Bar Association Standards for Imposing Lawyer Sanctions
3 (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 ABA Standard 4.6 -- Lack of Candor

5 4.61 Disbarment is generally appropriate when a lawyer knowingly
6 deceives a client with the intent to benefit the lawyer or another, and causes serious
injury or potential serious injury to a client.

7 4.62 Suspension is generally appropriate when a lawyer knowingly
8 deceives a client, and causes injury or potential injury to the client.

9 4.63 Reprimand is generally appropriate when a lawyer negligently fails
10 to provide a client with accurate or complete information, and causes injury or
potential injury to the client.

11 4.64 Admonition is generally appropriate when a lawyer engages in an
isolated instance of negligence in failing to provide a client with accurate or
12 complete information, and causes little or no actual or potential injury to the client.

13 ABA Standard 6.1 -- False Statements, Fraud, and Misrepresentation

14 6.11 Disbarment is generally appropriate when a lawyer, with the intent
to deceive the court, makes a false statement, submits a false document, or
15 improperly withholds material information, and causes serious or potentially
serious injury to a party, or causes a significant or potentially significant adverse
effect on the legal proceeding.

16 6.12 Suspension is generally appropriate when a lawyer knows that false
statements or documents are being submitted to the court or that material
17 information is improperly being withheld, and takes no remedial action, and causes
injury or potential injury to a party to the legal proceeding, or causes an adverse or
18 potentially adverse effect on the legal proceeding.

19 6.13 Reprimand is generally appropriate when a lawyer is negligent
20 either in determining whether statements or documents are false or in taking
remedial action when material information is being withheld, and causes injury or
21 potential injury to a party to the legal proceeding, or causes an adverse or potentially
adverse effect on the legal proceeding.

22 6.14 Admonition is generally appropriate when a lawyer engages in an
23 isolated instance of neglect in determining whether submitted statements or
documents are false or in failing to disclose material information upon learning of

1 its falsity, and causes little or no actual or potential injury to a party, or causes little
2 or no adverse or potentially adverse effect on the legal proceeding.

3 48. Respondent acted knowingly when he altered the expert's report and sent TB the
4 altered version. TB suffered actual injury in terms of her required involvement with additional
5 legal proceedings related to Respondent's conduct, and potential injury by receiving inaccurate
6 information from her lawyer about the expert's report. The presumptive sanction is suspension
7 under ABA Standard 4.62.

8 49. Respondent acted negligently when he testified that the altered version of the expert's
9 report was the one that the firm had received from the expert. His clients, the court, the firm, and
10 the legal profession suffered injury. The presumptive sanction is reprimand under ABA Standard
11 6.13.

12 50. The following aggravating factors apply under ABA Standard 9.22:

- 13 (d) multiple offenses;
14 (i) substantial experience in the practice of law [admitted 1999].

15 51. The following mitigating factors apply under ABA Standard 9.32:

- 16 (a) absence of a prior disciplinary record;
17 (b) absence of a dishonest or selfish motive;
18 (d) timely good faith effort to make restitution or to rectify consequences of
19 misconduct [bringing his conduct to the court's attention];
20 (g) character or reputation; and
21 (i) remorse.

22 52. It is additional mitigating factor that Respondent has agreed to resolve this matter at
23 an early stage of the proceedings.

24 53. On balance, based on the factors set forth above, the presumptive sanction of

1 suspension should be mitigated to reprimand.

2 **VI. STIPULATED DISCIPLINE**

3 54. The parties stipulate that Respondent shall two reprimands: one for his conduct in
4 sending the altered version the expert's report to TB and one for his negligent misrepresentation
5 to the court.

6 **VII. RESTITUTION**

7 55. No restitution is required by the stipulation.

8 **VIII. COSTS AND EXPENSES**

9 56. In light of Respondent's willingness to resolve this matter by stipulation at an early
10 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
11 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if
12 these costs are not paid within 30 days of approval of this stipulation.

13 **IX. VOLUNTARY AGREEMENT**

14 57. Respondent states that prior to entering into this Stipulation he has consulted
15 independent legal counsel regarding this Stipulation, that he is entering into this Stipulation
16 voluntarily, and that no promises or threats have been made by ODC, the Association, nor by any
17 representative thereof, to induce the Respondent to enter into this Stipulation except as provided
18 herein.

19 58. Once fully executed, this stipulation is a contract governed by the legal principles
20 applicable to contracts, and may not be unilaterally revoked or modified by either party.

21 **X. LIMITATIONS**

22 59. This Stipulation is a compromise agreement intended to resolve this matter in
23 accordance with the purposes of lawyer discipline while avoiding further proceedings and the

1 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
2 and ODC acknowledge that the result after further proceedings in this matter might differ from
3 the result agreed to herein.

4 60. This Stipulation is not binding upon ODC or the respondent as a statement of all
5 existing facts relating to the professional conduct of the respondent lawyer, and any additional
6 existing facts may be proven in any subsequent disciplinary proceedings.


7 61. This Stipulation results from the consideration of various factors by both parties,
8 including the benefits to both by promptly resolving this matter without the time and expense of
9 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
10 such, approval of this Stipulation will not constitute precedent in determining the appropriate
11 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
12 subsequent proceedings against Respondent to the same extent as any other approved Stipulation.

13 62. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
14 his or her review become public information on approval of the Stipulation by the Hearing
15 Officer, unless disclosure is restricted by order or rule of law.


16 63. If this Stipulation is approved by the Hearing Officer, it will be followed by the
17 disciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement
18 of Lawyer Conduct will be made.

19 64. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have no
20 force or effect, and neither it nor the fact of its execution will be admissible as evidence in the
21 pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil or
22 criminal action.


1 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to
2 Two Reprimands as set forth above.

3 
4 Tyler S. Weaver, Bar No. 29413
5 Respondent

Dated: 9/1/2020

6 
7 Christopher Ray Hardman, Bar No. 21237
8 Counsel for Respondent

Dated: 9/2/2020

9 
10 Joanne S. Abelson, Bar No. 24877
11 Managing Disciplinary Counsel

Dated: 9/2/2020