

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
PAUL LEE WARREN

VS. Docket No. 09-021-076259

MEMORANDUM ORDER

This matter came to be heard on February 22, 2010 via duly noticed teleconference upon a proposed Agreed Disposition entered into between the parties, which was presented to a panel of the Virginia State Bar Disciplinary Board (the Board) consisting of William E. Glover, First Vice Chair presiding, Raighne C. Delaney, Member, Nancy C. Dickenson, Member, J. Casey Forrester, Member, and Jody D. Katz, Lay Member (the Panel).

M. Brent Saunders, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and R. Paul Childress, Jr., Respondent's Counsel, appeared on behalf of Respondent. The Respondent, Paul Lee Warren, did not appear.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition and presented same to the Panel for its consideration.

The Vice Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Vice Chair, verified they had no such interests.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. Having duly deliberated and considered all the evidence before it, the Panel reconvened and announced its unanimous acceptance of the Agreed Disposition.

I. FINDINGS OF FACT

The Board finds the following facts by clear and convincing evidence as stipulated by the parties:

1. Respondent was licensed to practice law in the Commonwealth of Virginia at all times relevant hereto.
2. Respondent represented the plaintiff, Esther H. Howell ("Howell") in a medical malpractice jury trial held in the Circuit Court for the City of Hampton in May 2008 before Judge Wilford Taylor, Jr. ("Judge Taylor") (*Esther H. Howell v. Ajmal Sobhan, et al.*, Case No. CL 060001187-00).
3. A key issue in the medical malpractice case was whether the defendant surgeon Dr. Ajmal Sobhan negligently performed a surgical procedure that allegedly resulted in Howell suffering from chronic diarrhea.
4. During the trial, defense counsel called as a witness Dr. Anthony Philip Fisher ("Dr. Fisher"), Howell's family physician, who was placed under oath. During direct examination by defense counsel, Dr. Fisher testified that Howell never complained of problems with diarrhea during her office visits with Dr. Fisher following the surgical procedure at issue in the case. At the conclusion of the direct examination of Dr. Fisher, defense counsel moved for the admission of Dr. Fisher's records of his treatment of Howell.

5. During his cross-examination of Dr. Fisher, Respondent attempted to have Dr. Fisher identify certain of Howell's medical records prepared by another physician who had treated Howell prior to Dr. Fisher. Defense counsel objected, and after retiring the jury from the courtroom, Judge Taylor heard defense counsel's objections to Respondent's questioning of Dr. Fisher as to the content of those additional records. Although Judge Taylor sustained defense counsel's objections, he allowed Respondent to elicit testimony from Dr. Fisher outside the presence of the jury that the additional records were part of Howell's chart that he reviewed and relied on in treating Howell. Respondent then moved for the admission of the additional records which Judge Taylor denied. Before calling the jury back into the courtroom, Judge Taylor took a brief recess and left the courtroom.

6. During the recess, while Judge Taylor was absent from the courtroom and Dr. Fisher remained on the witness stand under oath and subject to further cross-examination, Respondent approached Dr. Fisher and asked him if he was aware that Howell had chronic diarrhea. Dr. Fisher did not respond.

7. Respondent's interaction with Dr. Fisher was observed by the courtroom bailiff, who brought it to the attention of defense counsel. When Judge Taylor returned to the courtroom from the recess, defense counsel requested a conference in chambers for the purpose of discussing Respondent's interaction with Dr. Fisher during the recess.

8. Judge Taylor, Respondent and defense counsel retired to Judge Taylor's chambers, where defense counsel apprised Judge Taylor of Respondent's interaction with Dr. Fisher during the recess. When Judge Taylor asked Respondent if he had spoken with Dr. Fisher during the recess, Respondent admitted he had approached Dr. Fisher during the recess, and stated that he

only asked about obtaining the refused medical records in conjunction with retrieving those records from the witness stand. According to defense counsel, Respondent denied making any statement or inquiry regarding Howell, the content of her medical records or any substantive issue in the case.

9. After taking evidence on the matter and placing on the record a summary of the discussion in chambers, Judge Taylor took the matter under advisement pending the conclusion of trial. Judge Taylor also ruled that the balance of Respondent's cross-examination of Dr. Fisher would be limited to the testimony elicited during direct examination.

10. After the conclusion of the trial, Judge Taylor found Respondent guilty of criminal contempt in violation of §18.2-456 of the Code of Virginia, 1950, as amended, upon finding that Respondent: i) asked Dr. Fisher about a matter that went to the "essence of his testimony" which "affected the trial;" and ii) was not candid with Judge Taylor about the incident.

II. NATURE OF MISCONDUCT

The Board finds that such conduct by Paul Lee Warren constitutes misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct as stipulated by the parties:

RULE 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal

RULE 3.4 Fairness To Opposing Party And Counsel. — A lawyer shall not:

(g) Intentionally or habitually violate any established rule of procedure or of evidence, where such conduct is disruptive of the proceedings.

RULE 8.4 Misconduct. — It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law . . .

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Board **ORDERS** that Respondent receive a **PUBLIC REPRIMAND WITHOUT TERMS** effective February 22, 2010.

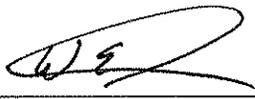
It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further **ORDERED** that the Clerk of the Disciplinary System shall send by Certified Mail, Return Receipt Requested, a copy of this order to Paul Lee Warren at his last address of record with the Virginia State Bar, Warren & Associates PLC, Suite 100, 409 Duke Street, Norfolk, Virginia 23510, by regular mail to R. Paul Childress, Jr., Respondent's Counsel, and hand-delivered to M. Brent Saunders, Assistant Bar Counsel.

Valarie May of Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, was the court reporter for the hearing and transcribed the proceedings.

ENTERED: February 25, 2010

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
William E. Glover, First Vice Chair