

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
JAMES McMURRAY JOHNSON**

VS B DOCKET NO. 19-060-115650

**AGREED DISPOSITION MEMORANDUM ORDER
NINETY DAY SUSPENSION WITH TERMS**

On October 8, 2020 this matter was heard by the Virginia State Bar Disciplinary Board (“Board”) upon the joint request of the parties for the Board to accept the Agreed Disposition signed by the parties and offered to the Board as provided by Part Six, Section IV, Paragraph 13-6.H of the Rules of the Supreme Court of Virginia. The panel consisted of Yvonne S. Gibney, Chair; Devika E. Davis; Steven B. Novey; Alexander Simon; and Martha J. Goodman, Lay Member. The Virginia State Bar was represented by Prescott L. Prince, Assistant Bar Counsel. Respondent James McMurray Johnson (“Respondent”) was present and was not represented by counsel. The Chair polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each member responded in the negative. Court Reporter Beverly Lukowsky, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, and Respondent’s Disciplinary Record, the arguments of the parties, and after due deliberation, the Board rejected the Agreed Disposition and made certain recommendations regarding an acceptable disposition.

UPON CONSIDERATION of the Board’s recommendations, the Respondent and the Bar agreed that the Respondent shall receive Ninety-day (90) Suspension with Terms, as set forth in the Agreed Disposition, as revised by the Stipulation of Amendment to Agreed Disposition, which are attached and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective October 8, 2020.

It is further **ORDERED** that:

The Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail of the Suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. The Respondent shall give such notice within 14 days of the effective date of the Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the Suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of the Suspension, he shall submit an affidavit to that effect within 60 days of the effective date of the Suspension to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

The Clerk of the Disciplinary System shall assess costs pursuant to Part 6, Section IV, Paragraph 13-9.E. of the Rules.

It is further **ORDERED** that an attested copy of this Order be mailed to the Respondent by certified mail, return receipt requested, at his last address of record with the Virginia State Bar at James McMurray Johnson, Esq., Johnson Law Firm, PC, 13478 Minnieville Rd., Ste. 204, Woodbridge, VA 22192, and a copy hand-delivered to Prescott L. Prince, Assistant Bar Counsel,

Virginia State Bar, Suite 700, 1111 E. Main Street, Richmond, VA 23219.

Entered this 16th day of October 2020

VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney Digitally signed by Yvonne S.
Gibney
Date: 2020.10.16 12:07:01 -04'00'

Yvonne S. Gibney
Chair



VIRGINIA:

**BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
JAMES MCMURRAY JOHNSON**

VSB Docket No. 19-060-115650

AGREED DISPOSITION

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H., the Virginia State Bar, by Prescott L. Prince, Assistant Bar Counsel and James McMurray Johnson, Respondent, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. At all times relevant hereto, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Gloria Maynard-Beyreuther ("Beyreuther"), the complainant herein, retained Respondent on or about 17 June 2014 to represent her in a medical malpractice/wrongful death case associated with the death of Ms. Maynard-Beyreuther's mother, Linda Maynard ("Maynard").
3. The alleged medical malpractice occurred in the final months of Maynard's life, during which time she endured several hospitalizations and medical procedures, including surgeries at NOVANT Prince William Hospital ("NOVANT"), SENTARA Hospital in Woodbridge, VA ("SENTARA") and INOVA Fairfax Hospital ("INOVA"). Maynard's health steadily deteriorated following the surgery at INOVA, culminating in her death on 16 February 2014.

4. At the time that Beyreuther retained Respondent, he had minimal experience in medical practice cases. He acknowledged that he had previously worked “a couple” of medical malpractice cases, but he had never taken a medical malpractice case to a jury.¹

5. Throughout the course of the representation, Respondent failed to keep Beyreuther informed about the status of the case, failed to promptly comply with Beyreuther’s requests for information, and failed to provide Beyreuther with sufficient information to reasonably permit her to make informed decisions regarding the case. On one or more occasions, Respondent provided Beyreuther with inaccurate or misleading information.

6. Virginia Code Section 8.01-20.1 requires a plaintiff in a medical malpractice action to obtain a written expert opinion that, based on a reasonable understanding of the facts, the defendant deviated from the applicable standard of care. This written expert opinion (also referred to as a Letter of Certification or “LOC”) must be obtained before the plaintiff requests service of process on a defendant.²

7. In September 2014, Respondent consulted with AMFS,³ a medical expert referral service, to have the case reviewed by an expert. Respondent did not request or pay for the reviewing expert to provide an LOC. The consulting expert advised that there may have been a

¹ This admission by Respondent was made to the VSB Investigator when he was interviewed during the course of the investigation of the bar complaint.

² Virginia Code Section 8.01-20.1 does not use the term “Letter of Certification,” but commentators discussing the written expert opinion required by the statute have variously used the term “Letter of Certification,” “Certificate of Merit,” or a similar descriptive term. Accordingly, the term “Letter of Certification” (“LOC”) is used herein to describe the written opinion, from a qualifying expert that, based upon a reasonable understanding of the facts, the defendant for whom service of process has been requested deviated from the applicable standard of care and the deviation was a proximate cause of the injuries claimed.

³ AMFS (American Medical Forensic Specialists) describes itself as having the most experienced, medical-legal savvy experts in the United States. Services provided by the company include a review of medical records for medical malpractice cases and rendering an expert opinion on the merits of the case.

violation of the standard of care, but one would have difficulty establishing that the violation of the standard of care caused Maynard's death.

8. Despite the consulting expert's concerns, Respondent concluded that sufficient evidence existed to proceed with the case. Respondent failed to inform Beyreuther about the expert's concerns, however.

9. In July 2015, Respondent advised AMFS that he needed an expert who could provide an LOC. Respondent was advised that he needed to provide additional documents and an additional fee in order to obtain the LOC. Respondent did not inform Beyreuther of the need to pay an additional fee.

10. In October 2015, Respondent paid AMFS a deposit of \$1,500, but he consistently failed to provide requested documents and respond to requests for information from AMFS. Respondent's continued failure to provide requested documents and maintain contact with AMFS caused delay such that Respondent did not obtain an LOC until March 2019.

11. Respondent consistently failed to accurately explain to Beyreuther why there was ongoing delay in obtaining the LOC.

12. On 21 January 2016 (one day before the statute of limitations expired), Respondent filed a Complaint in Fairfax Circuit Court alleging that INOVA and Drs. Shaver and LeFave, who treated Maynard while she was at INOVA, violated the standard of care and committed medical malpractice resulting in the wrongful death of Maynard. Respondent did not provide Beyreuther with a copy of the Complaint. Respondent did not request that the Complaint be served because he still had not obtained an LOC.

13. Virginia Code Section ("VCS") 8.01-335 generally provides that a civil lawsuit should be stricken if it has not been served on the defendant within one year of the

commencement of the case. Respondent was therefore required to complete service of process on the defendants no later than 21 January 2017. Respondent had not obtained the LOC as of that date, so he could not serve the defendants.

14. The court set a scheduling conference in the case for 14 September 2017. Respondent failed to appear at the scheduling conference and a Rule to Show Cause was entered against him for his failure to appear. Respondent failed to inform Beyreuther of the scheduling conference or of the Show Cause that was entered against him for his failure to appear.⁴

15. Respondent entered a nonsuit in the case on 19 September 2017.⁵ Respondent did not obtain Beyreuther's authorization to take the nonsuit, or even inform Beyreuther that he had taken the nonsuit, nor did he explain the consequences of a nonsuit.

16. Beyreuther asserts that, over the course of the representation, she made more than 50 attempts to contact Respondent, asking for information about her case, most of which were unanswered.

17. When interviewed by the VSB Investigator, Respondent denied that he failed to maintain proper communication with Beyreuther and stated that Loren White (one of Respondent's staff members) was Beyreuther's "case manager" and that Mr. White was the primary point of contact for the office to communicate with Beyreuther. In fact, Respondent never informed Beyreuther that Mr. White was to serve as her point of contact and, throughout the course of representation, Beyreuther had no substantive communication with Mr. White

⁴ Respondent submitted a written explanation to the court explaining that he was late to court because he was stuck in traffic. The Show Cause (FTA) was dismissed after Respondent took a nonsuit in the underlying case.

⁵ Virginia Code Section ("VCS") 8.01-277 provides that a plaintiff can nonsuit a case pursuant to VCS 8.01-380 even though there has been no service of process on the defendants within one year of filing the lawsuit.

regarding her case. Notwithstanding his initial assertion, Respondent acknowledges that he was responsible and accountable for any failure of communication.

18. In October 2017, after additional unsuccessful attempts to communicate with Respondent, Beyreuther called the Fairfax Circuit Court to inquire about her case and learned, for the first time, that Respondent had nonsuited the case.

19. Beyreuther requested a meeting with Respondent to inquire about the nonsuit. On the date of the scheduled appointment, however, a staff member from Respondent's office called Beyreuther and informed her that Respondent was sick and they would have to reschedule. Respondent never made a follow-up call or attempted to schedule a new appointment with Beyreuther.

20. On 20 October 2017, Beyreuther wrote to Respondent asking for a copy of her case file, to include, but not limited to, "all pleadings, correspondence, expert witness reports (from both experts that retired), medical records/bills and any notes." Beyreuther received the records shortly thereafter.

21. On 9 March 2018, Respondent refiled the lawsuit in Fairfax Circuit Court. The refiled complaint was identical or virtually identical to the previously filed complaint. Respondent did not discuss refiling the complaint with Beyreuther, or even attempt to contact her to obtain her authorization prior to taking this action, nor did he inform her of the action or provide her with a copy of the refiled Complaint at any reasonable time thereafter.

22. In addition to attempting to obtain an expert from through AMFS, Respondent made sporadic attempts to locate an expert witness from other sources. In February 2019, in the course of that search, Respondent received a report from a medical expert who opined that Respondent's theory of the case (i.e. that the standard of care was violated by the treatment

provided by Drs. Shaver and LeFave at INOVA) was incorrect and that, if malpractice occurred, it most likely occurred when Maynard received treatment at SENTARA. Respondent could not sue SENTARA since it had not been named in the original lawsuit and the statute of limitations against SENTARA had run even before he filed the lawsuit on 21 January 2016. Respondent did not inform Beyreuther of the report, his apparent mistakes, the consequences, or her options.

23. On 5 March 2019, nearly a year after the lawsuit was refiled and more than four and a half years after he was retained, Respondent obtained an LOC that supported Respondent's initial theory of the case. Thereafter, he attempted to obtain service on the defendants in the lawsuit but was unable to obtain proper service.⁶ Respondent attempted to serve Dr. Shaver, but he was not found at the address provided. Dr. LeFave was served on 13 March 2019, five days after the one-year deadline, but that service was subsequently quashed as being untimely. INOVA was served one day before the deadline, but that service was subsequently quashed since the Complaint was not accompanied by a valid summons issued by the Court.

24. The lawsuit was dismissed with prejudice against all defendants with the final order being entered on 19 September 2019.

25. On 6 May 2019, Beyreuther filed a bar complaint regarding Respondent's actions; on 28 May 2019 Respondent was informed of the complaint and that it was being referred for investigation. At the time Beyreuther filed the bar complaint, she was still unaware that Respondent had refiled the lawsuit.

26. In the course of his investigation, VSB Investigator Jackson discovered that the lawsuit had been refiled and, in a follow-up meeting with Respondent in August 2019, inquired

⁶ Service was attempted on Dr. Shaver, but he was not found at the address provided. Service was obtained on Dr. LeFave, Dr. LeFave was served on 13 March 2019, five days after the one-year deadline, but that service was subsequently quashed as being untimely. INOVA was served one day before the deadline, but that service was subsequently quashed since the Complaint was not accompanied by a valid summons issued by the Court.

as to why he continued to take action on behalf of Beyreuther without communicating with her. Respondent acknowledged that he had not had any contact with Beyreuther since October 2017 when she retrieved her file, but noted that she had not directed him to terminate the representation. Respondent stated that, since he had not been directed to terminate the representation, he refiled the lawsuit to protect her rights and to prevent the statute of limitations from running. Respondent stated that prior to refileing the lawsuit he checked to see if someone else had filed, but he did not contact Beyreuther to ask her if she had retained other counsel.

27. Even after Respondent provided Beyreuther with her file, and even after he received and responded to the bar complaint that highlighted his failure to communicate with his client, Respondent failed to inform Beyreuther that he had attempted to revive her lawsuit and that it was ongoing. Instead, he concealed from Beyreuther that he was working on her case and accruing expenses for which she was responsible.

28. Respondent also failed to note in his response to the bar complaint that he was continuing to take action in furtherance of his purported representation of Beyreuther and nothing in his response reasonably suggested that the representation was ongoing. He also failed to mention his continued engagement when initially interviewed by VSB Investigator David Jackson in June 2019.

29. Respondent denied that he was trying to hide the fact that he was continuing to act in furtherance of his representation. He stated that the bar complaint did not ask him if the representation was ongoing, so he did not believe that it was information that he needed to include in his response to the bar complaint.

30. On 19 August 2019, after his follow-up meeting with Investigator Jackson, Respondent informed Beyreuther, for the first time, that he had continued to pursue the matter

and requested permission to respond to the defendants' motion to quash service and dismiss the lawsuit.

31. In his August 2019 conversation with Beyreuther, Respondent failed to inform Beyreuther of multiple significant facts including, but not limited to:

- a. That Respondent had refiled that lawsuit 17 months earlier, in March 2018;
- b. That the basis of the defendants' motions was that, after Respondent obtained the Certificate of Merit in March 2019, Respondent failed to properly serve the lawsuit on the several defendants.
- c. That whereas Respondent asserted that he needed consent from Beyreuther to respond to the defense's contest of the service of process, he had already filed, on 2 August 2019, Plaintiff's Response to Defendant's Motion to Quash and Motion to Continue.

32. Beyreuther granted Respondent permission to continue, notwithstanding Respondent's previous lack of communication with her, believing that even though a positive outcome in the case was unlikely, no harm would result in granting permission to defend against the defense motion to dismiss.

33. The lawsuit was subsequently dismissed with prejudice against all defendants on the grounds that they had not been timely and properly served. As of 30 September 2019, Respondent had not yet informed Beyreuther of either of the dismissal or the basis for the dismissal.

II. NATURE OF MISCONDUCT

Such conduct by the Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2 Scope of Representation

- (a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Rule 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

Rule 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.7 Conflict of Interest: General Rule.

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

* * * * *

- (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph(a), a lawyer may represent a client if each affected client consents after consultation, and:
- (2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (3) the representation is not prohibited by law;
 - (4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (5) the consent from the client is memorialized in writing.

Rule 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

* * * * *

- (d) obstruct a lawful investigation by an admissions or disciplinary authority.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

* * * * *

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and the Respondent tender to the Disciplinary Board for its approval the agreed disposition as detailed below as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board.

1. Respondent shall be SUSPENDED for a period of 60 days;

2. Respondent shall engage in no further conduct resulting in sanctions by the Virginia State Bar for a period of two (2) years from the date of the acceptance of this Agreed Disposition by the VSB Disciplinary Board.

Upon satisfactory proof that such terms and conditions have been met, these matters shall be closed.

If, however, all the terms and conditions are not met by the deadlines imposed above, the Respondent agrees that the Disciplinary Board shall impose a one-year suspension of his license to practice law in the Commonwealth of Virginia pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O. Any Proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to Paragraph 13-9.E of the Rules of the Supreme Court of Virginia.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess an administrative fee.

Pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-30.B, the Respondent understands that his prior disciplinary record shall be furnished to the subcommittee considering this agreed disposition.

THE VIRGINIA STATE BAR

By: 
Prescott L. Prince, Assistant Bar Counsel


James McMurray Johnson, Respondent



VIRGINIA:

**BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
JAMES MCMURRAY JOHNSON**

VSJ Docket No. 19-060-113652

STIPULATION OF AMENDMENT TO AGREED DISPOSITION

In addition to the matters previously stipulated by Respondent and the Virginia State Bar in the Agreed Disposition that was presented to the Virginia State Bar Disciplinary Board (“Board”) and in furtherance of the telephone hearing before the Board on 8 October 2020, at which time the Board conditionally accepted said Agreed Disposition, Assistant Bar Counsel Prescott L. Prince, and Respondent James McMurray Johnson hereby confirm the amendment to the Agreed Disposition, orally agreed to during the course of the hearing, as follows:

The agreed period of the suspension shall be amended from “a period of 60 days” to “a period of 90 days.”

THE VIRGINIA STATE BAR

By: 

Prescott L. Prince
Assistant Bar Counsel



James McMurray Johnson
Respondent