Supreme Court of Florida

No. 72,027

THE FLORIDA BAR, Complainant,

v.

PAUL A. CAILLAUD, Respondent.

[May 3, 1990]

PER CURIAM.

Paul A. Caillaud, a member of The Florida Bar, having been adjudicated guilty in New York of four felonies of knowingly, unlawfully, and intentionally practicing medicine and/or holding himself out as being able to practice medicine,' was

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[1] In its complaint The Florida Bar charged that Cauillaud's offenses

> included the administration of a physical examination involving the diagnostic checking of the vital organs of the victim for the purpose of representing the physical condition of the victim, the administration of a hypodermic syringe containing what was represented to be an

automatically suspended from the practice of law on July 23, 1986. Thereafter The Florida Bar instituted a complaint which included the New York convictions and additional matters. The referee found that Caillaud committed no grievance except those leading to the New York convictions. He recommended a finding of guilt on those charges, but not guilty on the additional charges; an assessment of partial costs; and a three-year suspension nunc pro tunc to March 6, 1986. Caillaud has successfully complied with and completed all of the criminal sanctions. The referee recommended reinstatement without proof of rehabilitation because he was satisfied of Caillaud's present fitness to practice law.

The bar sought review only on Caillaud's immediate reinstatement without his complying with a separate application and reinstatement proceeding. Being concerned about the nature of Caillaud's misconduct, we directed the parties to submit additional briefs addressed to the suitability of the recommended discipline. Because the referee made specific findings as to the factual allegations against Caillaud, the bar does not challenge the reasonableness of the referee's recommended suspension

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> antibiotic and the taking of a throat culture, the administration of an oral anesthetic or pain killer in the treatment of a victim's purported ulcer, the catheterization of victims for the alleged purpose of taking cultures, treating a victim for chest pains by administering what was purported to be an EKG and administering injections of purported adrenalin [sic] for the purpose of regulating the heartbeat and prescribing and giving oral medication.

instead of disbarment. Caillaud, on the other hand, argues that the three-year suspension is too severe a penalty. Contrary to both of these positions, we gave serious consideration to disbarment. On the totality of the circumstances, however, and after much study and debate, we now conclude that the recommended suspension is both warranted and adequate. We agree with the bar that one suspended for more than ninety days must comply with the reinstatement process before being eligible to practice law again.

Rule 3-5.1(e) of the Rules Regulating The Florida Bar mandates, in part, that "[a] suspension of more than ninety (90) days shall require proof of rehabilitation." In The Florida Bar v. Pavlick, 504 So.2d 1231 (Fla. 1987), we held that the referee erred in recommending automatic reinstatement following a two-year suspension. In The Florida Bar v. Musleh, 453 So.2d 794 (Fla. 1984), we held that the referee overlooked The Florida Bar's Disciplinary Rules in recommending automatic reinstatement after a six-month suspension. Both Pavlick and Musleh cited article XI, rule 11.10(4) of the former Florida Bar Integration Rule for authority requiring proof of rehabilitation when a respondent is suspended for more than three months. Present rule 3-5.1(e) is substantially the same.

A trial by referee for violations of the bar rules is different than a trial before a referee concerning a petition for reinstatement. In reinstatement proceedings bar counsel is required to conduct an extensive investigation to determine

whether the respondent has been rehabilitated. Also, the respondent must supply The Florida Bar with detailed information as described in rule 3-7.9(n)(2).

In the instant proceeding the bar had no reason to obtain information concerning rehabilitation, as required by rule 3-7.9, because Caillaud had not filed an application for reinstatement. Therefore, the referee did not receive evidence from The Florida Bar concerning these matters. We conclude that the referee erred in recommending that Caillaud be reinstated as a member in good standing without requiring proof of rehabilitation.

Accordingly, we approve the referee's finding of guilt and suspend Paul A. Caillaud from the practice of law for three years, nunc pro tunc July 23, 1986 (the date of his original suspension), but require that Caillaud go through the reinstatement procedures required by rule 3-7.9. He shall not be required to take a bar examination. Rule 3-5.1(e).

Costs in the amount of $1,204.49 are assessed against Caillaud, for which sum judgment is entered. He may, however, pay these costs in the manner set forth in the referee's report.[2]

It is so ordered.

OVERTON, McDONALD, SHAW, BARKETT and GRIMES, JJ., Concur
EHRLICH, C.J., Concurs in part and dissents in part with an opinion, in which KOGAN, J., Concurs

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[2] The referee concluded that the costs could be paid in periodic installments and that reinstatement need not be conditioned on payment in full.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS SUSPENSION.

EHRLICH, C.J., concurring in part and dissenting in part.

I concur with the majority's conclusion that the referee erred by recommending that Caillaud be reinstated as a member in good standing without requiring proof of rehabilitation. I dissent, however, from that portion of the majority opinion which approves the disciplinary measure of suspension recommended by the referee.

In making his recommendation, the referee quoted extensively from the respondent's Memorandum Concerning Law and Discipline. The referee found merit in the respondent's pledged resolve to avoid any such actions in the future. This factor, however, relates to the issue of rehabilitation rather than mitigation of the conduct. The fact that respondent's actions worked no injury is merely fortuitous and does not mitigate the seriousness of the conduct at issue. The fact that respondent has been deprived of his livelihood for a significant period of time is the natural consequence of his own wrongful conduct, and the fact that he was not "offered" an opportunity to fully present his position until six months ago is due to the fact that respondent chose to plead guilty to the four felony charges. That respondent has fully complied with all requirements of New York state authorities with regard to his criminal convictions and all orders of the referee with regard to the disciplinary proceeding is no more than what was legally required of respondent and likewise does nothing to lessen the gravity of his offense or the degree of discipline which is appropriate.

Finally, the fact that respondent received no personal benefit or gain from his unauthorized and unlawful acts is irrelevant to the question of whether respondent's conduct was of such nature as to justify revocation of his privilege to practice law in Florida.

While I agree with the referee that "enough is enough,''I do not believe that the discipline recommended by him, suspension of three years, is enough. Caillaud pled guilty to four counts of unauthorized practice of medicine on four separate victims. The acts underlying these counts consisted of administering a physical examination, including the diagnostic checking of the vital organs; treating a patient suffering from a sore throat by the administering of a hypodermic syringe containing what was represented to be an antibiotic, taking a throat culture, and diagnosing an infection of the larynx; treating a patient for a purported ulcer by administering an oral anesthetic or pain killer and catheterizing for the alleged purpose of taking a culture; and treating a patient suffering from chest pains by administering what was purported to be an EKG, administering several injections of purported adrenaline for the purpose of regulating the heartbeat, and prescribing and giving oral medication.

Respondent's conduct offered the potential for injury and possibly death to innocent people who submitted their bodily ills to him under the mistaken belief that he was a medical doctor. That he would impersonate a medical doctor and undertake the care and treatment of the ills of others displays to me a total lack

of knowledge and feeling of what it means to be a professional. Such misconduct merits no less than disbarment, in my opinion.

Even if a three-year suspension is proper, I believe respondent should be required to successfully take the Florida bar examination to demonstrate technical competence since he will have been out of the practice for more than three years.

Hence, I dissent from that portion of the majority opinion which imposes the referee's recommended discipline of a three-year suspension.

KOGAN, J., Concurs

Original Proceeding - The Florida Bar

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for Complainant

Paul A. Caillaud, in proper person and Henry Edgar, Co-Counsel, Miami, Florida,

for Respondent