

**WALTER H. JACOBS**

**Public Reprimand No. 2018-2**

**Order (public reprimand) entered by the Board on March 12, 2018.**

**SUMMARY<sup>1</sup>**

The respondent was admitted to the bar of the Commonwealth in 2008. Previously, he was licensed to practice medicine in Maine, Massachusetts, and New Hampshire. The respondent has not been licensed to practice medicine in any jurisdiction since June 30, 2012.

In June of 2013, a defendant was indicted in New Hampshire on fourteen counts of aggravated felonious sexual assault. The alleged victim was the former stepdaughter of the defendant. The assaults allegedly took place between May 1992 and May 1994, when the victim was ten to twelve years old. At the time of the alleged assaults, the defendant was living with the victim's mother, the victim, and the victim's younger sister.

The respondent was friends with the defendant around the time of the alleged assaults. The respondent acted as physician to the victim, her sister, and her mother at various times in the past. The respondent socialized with the defendant and attended social gatherings at his house where the respondent interacted with the victim, her sister, and her mother.

The criminal case was scheduled for trial beginning on May 5, 2014. On or about March 10, 2014, the respondent filed an application to appear *pro hac vice* in New Hampshire as counsel for the defendant in the pending criminal matter. When the respondent filed his application to appear *pro hac vice*, he did not perceive or understand there to be a conflict of interest in his representation of the defendant in the New Hampshire prosecution.

Admission in New Hampshire on a *pro hac vice* basis is governed by New Hampshire Superior Court Rule 19. New Hampshire Superior Court Rule 19(c) states:

The court has discretion as to whether to grant applications for admission *pro hac vice*. An application ordinarily should be granted unless the court finds reason to believe that:

- (1) such admission may be detrimental to the prompt, fair and efficient administration of justice;
- (2) such admission may be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;
- (3) one or more of the clients the applicant proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk; or
- (4) the applicant has engaged in such frequent appearances as to constitute common practice in this State.

There was a significant risk that the respondent's representation of the defendant would violate his duty of confidentiality as a physician to the victim who was his former patient, and might require the respondent to testify as a witness. There was also a significant risk that the

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<sup>1</sup> Compiled by the Board of Bar Overseers based on the record of proceedings before the board.

respondent's representation of the defendant would be materially limited by the respondent's responsibilities to his former patient.

On March 21, 2014, the Court granted a motion for the respondent to appear *pro hac vice* as counsel to the defendant, together with local counsel. At the pre-trial conference on April 25, 2014, the State raised concerns that the respondent had served as the physician for the victim, and was a family friend of the victim, her mother, and her sister during the time frame alleged in the indictments. The State also raised concerns that the respondent might be called to testify as a witness. The State moved on the record, in essence, to disqualify the respondent as counsel to the defendant.

At the pre-trial conference, the respondent acknowledged that he had treated the victim as a physician. The respondent asserted in open court that the victim had never disclosed her sexual assaults to him in his capacity as her physician.

On April 28, 2014, the State filed a written motion to preclude the respondent from cross-examining the victim, her mother, and her sister, all of whom had been identified as likely State witnesses. On April 30, 2014, the State filed a motion to vacate the admission of the respondent to practice in New Hampshire *pro hac vice*. On May 1, 2014, the Court entered an order granting both motions, and vacated the respondent's admission *pro hac vice*.

On or about May 4, 2014, the defendant, through local counsel, filed a motion for reconsideration of the Court's order. After a hearing on June 6, 2014, the Court denied the motion to reconsider on June 16, 2014. The defendant obtained new counsel and the trial was held in May 2015. The defendant was convicted and the conviction was affirmed on direct appeal.

The respondent's representation of the defendant, when there was a significant risk that the representation would be materially limited by the respondent's responsibilities of confidentiality to the victim, who was his former patient, was a concurrent conflict of interest that violated Rule 1.7(a)(2) of the New Hampshire Rules of Professional Conduct. The respondent's representation of the defendant in a criminal matter where the victim was a former medical patient violated Rule 1.16(a)(1) of the New Hampshire Rules of Professional Conduct.

In mitigation, where the respondent's *pro hac vice* admission was vacated before trial and the defendant was represented thereafter by other counsel, there was no ultimate harm caused to any affected third parties. The respondent did not act out of self-interest, as he was planning to represent the defendant on a pro bono basis because the defendant was a friend. The respondent also did not conceal his prior medical treatment of the victim and her family from the Court, and in fact filed pre-trial motions that brought to the attention of the Court and prosecution that he had previously treated the victim and her family.

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. The Board of Bar Overseers accepted the parties' recommendation and imposed a public reprimand on February 12, 2018.