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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
WESLEY K. MCLAUGHLIN,
Lawyer (Bar No. 35374).

Proceeding No. *A#00067*
ODC File No(s).14-01319, 13-00873
STIPULATION TO SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Erica Temple, Respondent's Counsel Gregory Paul Turner, and Respondent lawyer Wesley K. McLaughlin.

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

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1 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
2 avoid the risk, time, and expense attendant to further proceedings.

3 Respondent wishes to stipulate to suspension without affirmatively admitting the facts
4 and misconduct in ¶¶ 2-15, rather than proceed to a public hearing. Respondent agrees that if
5 this matter were to proceed to a public hearing, there is a substantial likelihood that ODC would
6 be able to prove, by a clear preponderance of the evidence, the facts and misconduct in ¶¶ 2-15,
7 and that the facts and misconduct will be deemed proved in any subsequent disciplinary
8 proceeding in any jurisdiction.

9 I. ADMISSION TO PRACTICE

10 1. Respondent was admitted to practice law in the State of Washington on October 27,
11 2004. Respondent has been suspended since May 2016 for non-payment of licensing fees.

12 II. STIPULATED FACTS

13 2. From 2005 to 2006 Andrew Jacobs, a non-lawyer, provided funding to Respondent
14 to establish the Law Office of McLaughlin & Associates, Inc. (the Firm), whose primary focus
15 was personal injury auto accidents.

16 3. In 2006, Mr. Jacobs incorporated Tacoma Therapy, Inc. (TMT), a massage therapy
17 clinic. Mr. Jacobs owned the clinic along with his wife. He managed TMT, with limited input
18 from his wife, and exercised control over all business decisions.

19 4. In 2008, Mr. Jacobs incorporated Tacoma Rehabilitation Therapy, Inc. (TRT), a
20 physical therapy clinic he owned with his wife.

21 5. It was the practice of TMT and TRT to focus on treating car accident victims who
22 were either covered by Personal Injury Protection (PIP) under their auto policies, or were
23 represented by counsel in a personal injury claim against another driver.

1 6. Through his employees, Mr. Jacobs directed TMT and TRT patients to the Firm, and
2 vice versa. The arrangement was mutually beneficial because TMT and TRT profited from
3 physical and massage therapy treatments and the Firm profited from collecting attorney fees out
4 of the general damages portion of personal injury settlements.

5 7. Mr. Jacobs and Respondent relied upon Firm employee Nathan Lemings to help
6 direct the trafficking of patients to and from the Firm. Mr. Lemings marketed the Firm to
7 medical providers, tow companies, collision centers, and other referral sources. At Mr. Jacobs's
8 direction he distributed gift cards and cash to medical providers, tow truck drivers, and others
9 for referrals to the Firm.

10 8. Respondent also directed Mr. Lemings to provide \$100 gift cards to referral sources
11 in exchange for referrals, and to refer clients to certain medical providers, because those
12 providers would then refer clients back to them. Respondent also instructed Mr. Lemings to use
13 cash from the Firm accounts to pay tow truck drivers and collision companies for referrals to the
14 Firm. Doctors who referred patients were sometimes provided Sounders tickets.

15 9. Respondent personally gave gift cards and cash to tow companies for referrals as
16 well.

17 10. A substantial portion of the Firm's clients came from TMT and TRT.

18 11. In the process of representing personal injury clients, it was common for providers
19 (such as doctors and therapists) to have a lien on settlements. In settling cases, sometimes the
20 Firm would ask the providers to reduce their liens to facilitate a settlement. But it was
21 extremely uncommon for the Firm to reduce TMT and TRT's bills.

22 12. Mr. Jacobs sometimes took part in hiring and firing paralegals and other staff at the
23 Firm.

1 13. In 2008, Mr. Jacobs created a "marketing" company. Direct Solutions Marketing,
2 Inc. (DSM). Respondent paid part of the Firm's profits to DSM. The Firm records show
3 substantial payments to DSM for "marketing" services, but DSM conducted little legitimate
4 marketing.

5 14. From 2008 to 2012, the Firm transferred over \$1,000,000 to DSM accounts.

6 15. In 2012 Respondent directed his bookkeeper to give Mr. Jacobs financial
7 information for the Firm, including IOLTA account records. Respondent wanted to show Mr.
8 Jacobs the financial status of the Firm because Mr. Jacobs had demanded more money from
9 Respondent and had threatened to stop referring clients to the Firm.

10 16. In March 2013, Allstate Insurance Company (Allstate) filed a lawsuit in U.S. District
11 Court against Respondent, the Firm, TMT, TRT, Mr. Jacobs, Mr. Lemings, and related entities.

12 17. Allstate's expert reviewed medical records and bills for all 168 of the underlying
13 claims at issue in the case. In the expert's opinion, the records showed a pattern by TMT and
14 TRT of pre-determined, unsubstantiated care, exaggerated clinical findings, inappropriate
15 referrals, unreasonable charges, modes of care that were not supported as medically necessary,
16 and unreasonably high charges for treatments. Respondent disputes this opinion.

17 18. Allstate alleged that, if not for the fraudulent actions of Mr. Jacobs, Respondent, and
18 the related entities, it would not have paid any amount directly to TMT and TRT for the
19 purported services provided to the underlying claimants, nor would Allstate have considered
20 TMT and TRT invoices in evaluating any third party claim. Respondent disputes this
21 allegation.

22 19. In January 2015, the parties entered a confidential settlement and a stipulated
23 dismissal of Allstate's claims against Respondent.

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III. STIPULATION TO MISCONDUCT

20. By sharing legal fees and client records with Mr. Jacobs, and by allowing Mr. Jacobs to direct and control some aspects of the Firm and Respondent's professional activities, Respondent violated RPC 5.4(a), RPC 5.4(b) and RPC 5.4(d).

21. By paying and otherwise rewarding therapists, doctors, tow truck operators, and other third parties for referrals, Respondent violated RPC 7.2(b) and RPC 7.3(a).

IV. PRIOR DISCIPLINE

22. Respondent has no prior discipline.

V. APPLICATION OF ABA STANDARDS

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

24. ABA Standard 7.0 is most applicable to cases involving violations of RPC 5.4 and RPC 7.2, and RPC 7.3:

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

25. Respondent knowingly allowed Mr. Jacobs to participate in business activities of the firm and intentionally participated in a long-running scheme to acquire clients by paying for referrals in concert with Mr. Jacobs and others.

1 26. There was at least potential injury to clients, who may have received lower net
2 settlements due to Respondent's loyalty to TMT and TRT and other medical providers, and may
3 have undergone unnecessary treatments. There was injury to insurance companies like Allstate,
4 whose costs were inflated by Respondent's actions. There was also injury to the profession in
5 the eyes of the public.

6 27. The presumptive sanction is suspension.

7 28. The following aggravating factors apply under ABA Standard 9.22:

- 8 (b) dishonest or selfish motive;
9 (c) a pattern of misconduct;
(d) multiple offenses.

10 29. The following mitigating factor applies under ABA Standard 9.32:

- 11 (a) absence of a prior disciplinary record;
12 (f) inexperience in the practice of law at the time of the misconduct;
(k) imposition of other penalties or sanctions [settlement with Allstate].

13 30. It is an additional mitigating factor that Respondent has agreed to resolve this matter
14 at an early stage of the proceedings.

15 31. On balance the aggravating and mitigating factors do not require a departure from
16 the presumptive sanction but support a lengthy suspension.

17 VI. STIPULATED DISCIPLINE

18 32. The parties stipulate that Respondent shall receive a three-year suspension for his
19 conduct. Reinstatement is conditioned upon payments of costs.

20 VII. RESTITUTION

21 33. An order of restitution is not appropriate in this matter.

22 VIII. COSTS AND EXPENSES

23 34. In light of Respondent's willingness to resolve this matter by stipulation at an early

1 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,500
2 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
3 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

4 **IX. VOLUNTARY AGREEMENT**

5 35. Respondent states that prior to entering into this Stipulation he has consulted
6 independent legal counsel regarding this Stipulation, that Respondent is entering into this
7 Stipulation voluntarily, and that no promises or threats have been made by ODC, the
8 Association, nor by any representative thereof, to induce the Respondent to enter into this
9 Stipulation except as provided herein.

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

12 **X. LIMITATIONS**

13 37. This Stipulation is a compromise agreement intended to resolve this matter in
14 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
15 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
16 and ODC acknowledge that the result after further proceedings in this matter might differ from
17 the result agreed to herein.

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

21 39. This Stipulation results from the consideration of various factors by both parties,
22 including the benefits to both by promptly resolving this matter without the time and expense of
23 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As

1 such, approval of this Stipulation will not constitute precedent in determining the appropriate
2 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
3 subsequent proceedings against Respondent to the same extent as any other approved
4 Stipulation.

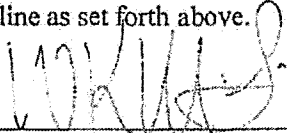
5 40. Under ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely on
6 the record agreed to by the parties. Under ELC 3.1(b), all documents that form the record
7 before the Board for its review become public information on approval of the Stipulation by the
8 Board, unless disclosure is restricted by order or rule of law.

9 41. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
10 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
11 Rules for Enforcement of Lawyer Conduct will be made.

12 42. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this
13 Stipulation will have no force or effect, and neither it nor the fact of its execution will be
14 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
15 proceeding, or in any civil or criminal action.


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WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to Discipline as set forth above.




Wesley K. McLaughlin, Bar No. 35374
Respondent

Dated: 7-14-2017



Gregory Paul Turner, Bar No. 20085
Counsel for Respondent

Dated: 7/14/17



Erica Temple, Bar No. 28458
Disciplinary Counsel

Dated: 7/14/17