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WASHINGTON STATE
SUPREME COURT

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Supreme Court No. 201,531-0

LANCE STEWART STRYKER,
(WSBA No. 35005)

Petitioner,

vs.

WASHINGTON STATE BOARD OF MANDATORY
CONTINUING LEGAL EDUCATION,

Respondent.

PETITIONER'S OPENING BRIEF

Lance S. Stryker
WSBA No. 35005
Petitioner

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 ORIGINAL

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III. INTRODUCTION

This appeal concerns the Mandatory Continuing Legal Education Board's (MCLE Board or Board) denials of Petitioner Lance S. Stryker's (WSBA No. 35005) subsequent petitions for a continuing exemption from the continuing legal education requirements for 2012-2014 and/or alternatively, a continuing extension until Petitioner ultimately recovers from a life threatening illness (acute pancreatitis and ensuing complications) which began on October 28, 2014, and continues.

Petitioner's initial petition was made (and presumably granted) on the basis of undue hardship caused by serious illness and disability (acute pancreatitis). Petitioner's subsequent petitions were based on the continuation of his serious illness and on complications arising therefrom. None of the Board's denials considered Petitioner's serious illness or the complications arising therefrom. Rather, the Board's final denial in its "Findings of Fact, Conclusions of Law and Order of the Board" entered on April 27, 2016 (Exhibit 8), appears to be based on two incongruous and arbitrary grounds.

First, on p. 3 of the Board's FINDINGS/RULINGS (Exhibit 8), it is stated that: "Stryker has an active client yet at the same time claims that his physical condition does not lend itself to satisfying the

mandatory continuing legal education”. In Admissions and Practice Rule (APR) 11(i)(5) - **Petition for Extension, Modification or Waiver** - for an undue hardship exemption based on serious illness or disability, none of the factors to be considered mentions the number of active clients a petitioner for an undue hardship exemption based on serious illness or disability may have. When the Board granted Petitioner’s original petition based on a serious illness, the record reflects that the Board made no inquiry of the number of Petitioner’s active clients or that the Board even considered Petitioner’s active clients in granting the petition. (Exhibits 1 and 2). There is no rational basis for the Board to deny a petition for undue hardship based on serious illness or disability simply because the petitioner has one or more active clients. There is no perceivable correlation between an undue hardship determination based on serious illness or disability and the number of clients a petitioner may then have.

Secondly, on pp. 3-4 of the Board’s FINDINGS/RULINGS (Exhibit 8), it is stated that: “[B]ased on Stryker’s testimony, the Board concludes that Stryker has no intention of completing the MCLE requirements if an extension were granted.” There is *no evidence* that Petitioner has no intention of completing the MCLE

requirements if an extension were granted. The Board cites no actual testimony on which it bases its conclusion.

To the contrary, Petitioner testified that he signed up and paid for two series of on-line MCLE classes which he could not complete because of his present medical, physical and mental condition (Verbatim Report of Proceedings (VRP) at pp. 10:12 - 11:6). Petitioner further testified that he does not know what his future intentions are or what his future holds because he has at least one surgery, and possibly two, which must be performed before he knows whether his acute pancreatitis affliction will be cured or not. (VRP at pp. 17:10 - 25 and 18:22 - 19:3).

Again, in APR Rule 11(i)(5) - **Petition for Extension, Modification or Waiver** - for an undue hardship exemption based on serious illness or disability, none of the factors to be considered mention a petitioner's future intentions. It is the height of arbitrariness for the Board to claim it can read Petitioner's mind and intentions, know the future or predict what Petitioner will do when his ultimate medical, physical and mental condition will be resolved in the coming months. The Board found on p. 2 of its RULINGS/FINDINGS (Exhibit 8) that Petitioner is duly licensed and an Active member in good standing with the Bar except for the

MCLE requirements for 2012-2014 reporting period. There is *no evidentiary* basis for the Board to conclude that Petitioner does not qualify for a continuing undue hardship based on serious illness or disability - his continuing acute pancreatitis and the complications arising therefrom. The Board does not dispute the nature or extent of Petitioner's continuing acute pancreatitis and the complications arising therefrom nor has it presented a rational, non-arbitrary basis for denying Petitioner's request for an exemption based on undue hardship arising from a continuing serious illness and disability.

IV. ASSIGNMENTS OF ERROR

1. The Board committed reversible error in denying the petition for an exemption based on an undue hardship arising from a continuing serious illness and disability on the grounds that Petitioner represents a single client.

2. The Board committed reversible error in denying the petition for an exemption based on an undue hardship arising from a continuing serious illness and disability based on the Board's subjective discernment of Petitioner's alleged future intentions for which there is no evidence in the record.

V. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue 1. May the Board deny a petition for an exemption from

MCLE reporting requirements based on undue hardship arising from a continuing serious illness and disability on the grounds that the petitioner represents a single client rather than on the petitioner's medical, physical and mental condition? Assignment of Error 1.

Issue 2. May the Board deny a petition for an exemption from MCLE reporting requirements based on undue hardship arising from a continuing serious illness and disability on the grounds that the Board subjectively discerns the Petitioner's future intentions for which there is no evidence in the record rather than on Petitioner's medical, physical and mental condition? Assignment of Error 2.

VI. STATEMENT OF THE CASE

Procedural History: Petitioner first requested an exemption from the MCLE education requirements for 2012-2014 and, alternatively, an extension until December 31, 2015, a waiver of the live credit requirement, and a waiver of the late fee by petition dated January 27, 2015. (Exhibit 8, p. 1).

The MCLE Board Executive Secretary in March of 2015 sent Petitioner notice of the denial of an exemption but a grant of an extension until December 31, 2015, a waiver of the live credit requirement, and a waiver of the late fee (if all credits are completed by the December 31, 2015 deadline). (Exhibit 8, pp. 1-2).

Petitioner's second request dated December 27, 2015, sought an exemption from the MCLE requirements for 2012-2014 and, alternatively, an extension until December 31, 2016, a waiver of the live credit requirement, and a waiver of the late fee based on his continuing serious illness. (Exhibit 8, p. 2).

The MCLE Board denied the request on January 22, 2016, and sent Petitioner a Pre-Suspension notice on February 12, 2016. (Exhibit 8, p. 2).

Petitioner then again requested on March 8, 2016, an exemption from the MCLE requirements for 2012-2014 and, alternatively, an extension until December 31, 2016, a waiver of the live credit requirement, and a waiver of the late fee based on his continuing serious illness. (Exhibit 8, p. 2).

The Board then met on April 8, 2016, at the offices of the Washington State Bar Association and considered Petitioner's appeal from the Board's denial of his petition for a further extension to complete the requirements for his 2012-2014 MCLE reporting period based on his continuing serious illness. (Exhibit 8, p. 3).

Petitioner appeared and provided oral testimony at the April 8, 2016, meeting of the Board via teleconference. (Exhibit 8, p. 1).

The Board's denial of Petitioner's appeal was entered on April

27, 2016. The Board found, among other things, that Petitioner is a lawyer, duly licensed by the State of Washington and that except for the current 2012-2014 CLE credit shortage and MCLE certification, Petitioner is an Active member in good standing with the Bar and that the 2012-2014 MCLE reporting period is Petitioner's first reporting period of failing to meet MCLE compliance requirements by the deadlines set forth in APR 11. Petitioner does have a total of 20.25 credits toward the 2012-2014 MCLE requirements. (Exhibit 8, pp. 3-4).

VII. STANDARDS OF REVIEW

As stated in *In re Disciplinary Proceeding Against Poole*, 156

Wn.2d 196, 125 P.3d 954 (2006):

“Standard of Review: This court exercises plenary authority in matters of attorney discipline. [Citation omitted]. We give considerable weight to the hearing officer's findings of fact, especially with regard to the credibility of witnesses, and we will uphold those findings so long as they are supported by ‘substantial evidence.’ ” [Citation and footnote omitted].

“ ‘In reviewing these findings, we look at the entire record. However, ‘we ordinarily will not disturb the findings of fact made upon conflicting evidence.’ [Citations omitted]. In the end, the Bar has the ultimate ‘burden of establishing an act of misconduct by a clear preponderance of the evidence.’ [Citation omitted]. ‘Clear preponderance’ is an intermediate standard of proof . . . requiring greater certainty than ‘simple preponderance’ but not to the extent required

under ‘beyond [a] reasonable doubt.’ *Id.* Thus, a clear preponderance of all the facts proved must support a finding of misconduct. [Footnote omitted]. We review conclusions of law *de novo* which must be supported by the factual findings. [Citations omitted]. In so doing, we give ‘serious consideration’ to the Board’s recommended sanction and generally affirm it “unless [the] court can articulate a specific reason to reject the recommendation.” [Citations omitted]. (156 Wn.2d at pp. 208-210).

(See also *In re Juarez*, 143 Wn.2d 840, 864, 24 P.3d 1040 (2001)).

VIII. ARGUMENT

Issue 1. The Board may not deny a petition for an exemption from MCLE reporting requirements based on undue hardship arising from a continuing serious illness and disability on the grounds that the petitioner represents a single client rather than on the petitioner’s medical, physical and mental condition

On p. 3 of the Board’s FINDINGS/RULINGS (Exhibit 8), it is stated that:

“Stryker has an active client yet at the same time claims that his physical condition does not lend itself to satisfying the mandatory continuing legal education.”

In Admissions and Practice Rule (APR) 11(i)(5) - **Petition for Extension, Modification or Waiver** - for an undue hardship exemption based on serious illness or disability, none of the factors to be considered mentions the number of active clients a petitioner for

an undue hardship exemption based on serious illness or disability may have.

“Petition for Extension, Modification or Waiver.

A lawyer may file with the MCLE Board an undue hardship petition for an extension, waiver, and/or modification of the MCLE requirements for that reporting period. *In consideration of the petition, the MCLE Board shall consider factors of undue hardship, such as serious illness, extreme financial hardship, disability, or military service, that affect the lawyer’s ability to meet the education or reporting requirements.* The petition shall be filed at any time in a form and manner as prescribed by the Association but a petition filed later than 30 days after the date of the APR 17 pre-suspension notice will not stay suspension for the reasons in the APR 17 pre-suspension notice.” (Emphasis added).

When the Board granted Petitioner’s original petition based on a serious illness or disability, the record shows that the Board made no inquiry of the number of Petitioner’s active clients or that the Board even considered Petitioner’s active clients in granting the petition. (Exhibits 1 and 2). There is no rational basis for the Board to deny a petition for undue hardship based on serious illness or disability simply because the petitioner has one or more active clients. There is no perceivable correlation between an undue hardship determination based on serious illness or disability and the number of clients a petitioner may have.

Issue 2. The Board may not deny a petition for an exemption

from MCLE reporting requirements based on undue hardship arising from a continuing serious illness and disability on the grounds that the Board subjectively discerns the petitioner's future intentions for which there is no evidence in the record rather than on petitioner's medical, physical and mental condition

On pp. 3-4 of the Board's FINDINGS/RULINGS (Exhibit 8), it is stated that:

“[B]ased on Stryker's testimony, the Board concludes that Stryker has no intention of completing the MCLE requirements if an extension were granted.”

There is *no evidence* that Petitioner has no intention of completing the MCLE requirements if an extension were granted. The Board cites no testimony on which it bases its conclusion.

To the contrary, Petitioner testified that he signed up and paid for two (2) series of on-line MCLE classes which he could not complete because of his present medical, physical and mental condition (VRP at pp. 10:12 - 11:6). Petitioner further testified that he does not know what his future intentions are or what his future holds because he has at least one more surgery, and possibly two, which must be performed before he knows whether his acute pancreatitis affliction will be cured. (VRP at pp. 17:10 - 25 and 18:22

- 19:3).

Again, in APR Rule 11(i)(5) - **Petition for Extension, Modification or Waiver** - for an undue hardship exemption based on serious illness or disability, none of the factors to be considered mention a petitioner's future intentions. It is the height of arbitrariness for the Board to claim it can read Petitioner's mind and intentions, know the future and/or predict what Petitioner will do when his ultimate medical, physical and mental condition may only be resolved in the coming months. The Board found on p. 2 of its RULINGS/FINDINGS (Exhibit 8) that Petitioner is duly licensed and an Active member *in good standing* with the Bar except for the MCLE requirements for 2012-2014 reporting period.

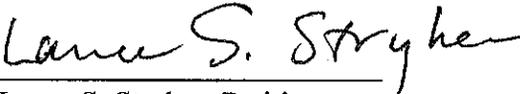
There is *no evidentiary basis* for the Board to conclude that Petitioner does not qualify for a continuing undue hardship exemption based on serious illness or disability - his continuing acute pancreatitis and the complications arising therefrom. The Board does not dispute the nature or extent of Petitioner's continuing acute pancreatitis and the complications arising therefrom nor has it presented a rational, non-arbitrary basis for denying Petitioner's request for an undue hardship exemption based on a continuing serious illness and disability.

IX. CONCLUSION

Petitioner requests that the order of the Board be reversed and that Petitioner be granted a continuing exemption from the 2012-2014 MCLE reporting requirements based on serious illness and disability until his recovery from acute pancreatitis and its ensuing complications is complete.

July 5, 2016 Respectfully Submitted,

LANCE S. STRYKER, PETITIONER
WSBA No. 35005

By: 
Lance S. Stryker, Petitioner

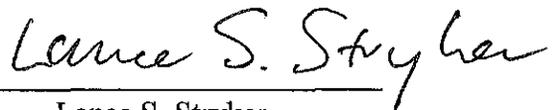
PROOF OF SERVICE

The undersigned certifies that he served a true copy of PETITIONER'S OPENING BRIEF by placing the same in an envelope which was sealed and thereafter deposited in the United States mail with first class postage thereon fully prepaid; such deposit taking place at White Salmon, Washington, on the date set forth below, and addressed as follows:

MCLE Board, Scott J. Bergstedt, Chair
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed on July 5, 2016, in White Salmon, Washington.



Lance S. Stryker