STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 28th day of March, 1996, the following order was made and entered:

Lawyer Disciplinary Board,
Complainant

vs.) No. 22953

Henry E. Wood, III, a member of The
West Virginia State Bar, Respondent

On a former day, to-wit, March 21, 1996, came the complainant, the Lawyer Disciplinary Board, by Janice B. Binder, its attorney, and also came the respondent, Henry E. Wood, III, a member of The West Virginia State Bar, by Caldwell, Cannon-Ryan & Riffee, and Joseph W. Caldwell, his attorneys, and presented to the Court their proposed agreement of discipline for the respondent's violation of Rules 1.4(a), 1.4(b), 1.3 and 1.16(d), Rules of Lawyer Disciplinary Procedure, wherein the respondent will submit to supervision of his practice of law for a period of one year from January 30, 1996 to January 30, 1997, said supervision by Joseph W. Caldwell, Esq., as set forth in the aforesaid proposed agreement.

Upon consideration whereof, the Court is of opinion to and doth hereby approve said agreement between the parties. It is therefore ordered that the respondent undergo supervision of his practice of law for the period of one year from January 30, 1996 to January 30, 1997, and to comply with all requirements relevant thereto included in the agreement.

Service of an attested copy of this order upon the parties shall constitute sufficient notice of the contents herein.

A True Copy

Attest: _____
Clerk, Supreme Court of Appeals

BEFORE THE LAWYER DISCIPLINARY BOARD
OF THE
STATE OF WEST VIRGINIA

IN RE: HENRY E. WOOD, III, an active member of The West Virginia State Bar **I.D.No. 93-01-175**

Supreme Court No. 22953

HEARING PANEL SUBCOMMITTEE REPORT
FINDINGS OF FACTS, CONCLUSIONS OF LAW
MITIGATION AND RECOMMENDED DISCIPLINE

The Hearing Panel Subcommittee, having reviewed the Stipulated Findings of Fact, Conclusions of Law, and Recommended Discipline in this matter, does find them to be acceptable and, consistent with the Stipulated Findings of Fact, Conclusions of Law, Mitigation, and Recommended Discipline does make the following Findings of Fact, Conclusions of Law and Recommended Discipline:

1. Henry E. Wood, III (Respondent herein) is a licensed member of The West Virginia State Bar who practices in Charleston, Kanawha County, West Virginia, and, as such, is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board. Respondent was admitted to the West Virginia State Bar on September 23, 1980.

2. Karen L. Wigal (Complainant herein) first met with Respondent in February of 1989 concerning a possible medical malpractice case.

3. An attorney-client agreement was signed by Complainant. The agreement did not have any of the blanks filled in, but it does have 1989 typed in.

4. A medical authorization form was signed by Complainant on March 9, 1989.

5. On January 18, 1990, Respondent filed *Karen L. Wigal and Theodore R. Wigal, her husband v. Stephen R. Mossburg, M.D.*, in the Circuit Court of Wood County, West Virginia, Civil Action No. 90-C-57.

6. The Complaint was filed a week before the two-year statute of limitations would have expired.

7. Respondent did not have the complaint served upon the defendant. Complainant was advised by Respondent that he would not serve the complaint unless and until he had expert corroboration as to any malpractice.

8. Respondent did not engage in discovery, other than obtaining Complainant's medical records from medical providers and reviewing the medical records.

9. Complainant along with her mother met with Respondent on approximately February 18, 1989. Complainant's husband was not present.

10. Complainant left this meeting with the Respondent with the original "Attorney/Client Agreement" and "Authorization for Medical and/or Hospital information." The Complainant returned to Respondent's office on March 9, 1989, with an executed original of the "Attorney/Client Agreement" which included her husband's signature and signed in from of a Notary Public in Respondent's office her "Authorization for Medical and/or Hospital Information."

11. The Complainant received copies of her medical file from the Respondent when she requested them in order to pursue her Social Security case.

12. On April 2, 1993, the Complainant called the Respondent's office and requested another set of copies. No later than April 22, 1993, copies of her records were sent to her.

13. On June 10, 1993, Respondent's office mailed copies of medical records, et al. to James C. West, Jr.

14. In June 1992, Respondent met Complainant and her husband in a restaurant to discuss the case. Respondent advised that the Complainant did not have a case after the Complainant delivered more medical records to Respondent.

15. Prior to June 1992, Respondent spoke with the Complainant on several occasions and met with the Complainant on at least one (1) prior occasion and explained her case to her before and after it was reviewed by Pamela Johnson, R.N., who was engaged to review the case by Respondent.

16. At this meeting, Complainant gave Respondent additional medical records.

17. Complainant and Respondent discussed her case from 1990 through June of 1992 and again beginning in March of 1993 through May 7, 1993. Complainant believed that Respondent was looking out for her best interest. Complainant believed that even though Respondent told her she did not have a case, Respondent was continuing to pursue her case.

18. Respondent took no formal action to close the case through any formal action nor did he communicate in writing to Complainant his belief that the case was closed. Based upon earlier communications with client, Respondent relayed his belief regarding the lack of malpractice on the part of Dr. Mossburg verbally but not in writing.

19. On July 10, 1992, a Notice of Dismissal was sent to Respondent indicating that no service of process had been obtained upon the defendant.

20. On September 11, 1992, *Wigal v. Mossburg* was dismissed without prejudice.

21. The notice and the order were sent to the Respondent and copies of these documents were not mailed to Complainant.

22. Complainant was advised verbally in March of 1993 that she did not have a case when Respondent and Complainant spoke about the actions of Drs. Bice and Modie (treating physicians).

23. On April 22, 1993, Complainant called the Wood County Circuit Clerk's office and was advised her case had been dismissed.

24. On April 22, 1993, Complainant called Respondent to discuss the dismissal of her case along with Respondent's opinion regarding Dr. Bice and Modie.

25. Respondent wrote a letter to Complainant dated April 22, 1993, in which he stated he did not believe Complainant had a complaint against Dr. Mossburg. The letter referred to was eight pages long and completed on April 22, 1993.

26. In this letter, Respondent stated "As you know I do not believe you have a case against Dr. Mossburg, but I would be happy to assist you in any ethical and legal way I can on your behalf." Specifically, Respondent refers to his offer to assist Complainant with having her case reinstated if ". . . you believe and can prove malpractice," but further states that his opinion is that " . . . no negligence could be proven against the same physician during the one month he treated you in 1987-1988."

27. By letter dated May 7, 1993, Respondent informed Complainant that, in Respondent's opinion, the evidence does not show a deviation from accepted medical standards with regard to Dr. Mossburg.

CONCLUSIONS OF LAW

28. By not adequately communicating his opinion as to the validity of Complainant's cause of action against Dr. Mossburg within a reasonable time following advice of the same and/or reaching that conclusion in a matter understandable to the client, Respondent has violated Rule 1.4(a) and 1.4(b) of the Rules of Professional Conduct.

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.

29. By not moving to dismiss the civil complaint against Dr. Mossburg or by communicating in writing in some other format in a reasonably diligent manner that Respondent would not pursue

Complainant's case against Dr. Mossburg, Complainant believed that the Respondent was pursuing her case even though Respondent had discussed the lack of merits/damages of same with the Complainant. This failure confused the Complainant and tended to cause her to believe her case was being pursued. Respondent violated Rules 1.3 and 1.4(a) of the Rules of Professional Conduct.

RULE 1.3 Diligence

> A lawyer shall act with reasonable diligence and promptness in representing a client.

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.

30. By not informing the client that he was withdrawing from representation Respondent violated Rule 1.16(d) of the Rules of Professional Conduct.

RULE 1.16 Declining or Terminating Representation

> (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

RECOMMENDED DISCIPLINE

Respondent has represented to the Hearing Panel that he will adopt office policies to increase the documentation of attorney-client communications, and he further agrees that he will document, either by letter or memoranda, communications with clients to ensure that a record of such discussions is made.

The Hearing Panel recommends that Respondent be publicly reprimanded and shall practice law for a period of twelve (12) months beginning December 1, 1995 and ending December 1, 1996, under the direct supervision of an attorney in good standing licensed within this state. The supervising attorney must be approved by the Office of Disciplinary Counsel and shall submit a monthly report to the Office of Disciplinary Counsel on the progress and office habits of the Respondent. Respondent shall, during this twelve (12) month period, complete fifteen (15) hours of office management/client communications and general ethics continuing legal education classes, approved by the Office of Disciplinary Counsel in addition to the Respondent's normal required CLE hours. Respondent shall, during the aforestated twelve (12) month period, commit to and complete 200 hours of pro bono publico community service to the Legal Aid Society of West Virginia or State Bar Association program for the indigent, all of which shall be approved by the Office of Disciplinary Counsel. Respondent shall submit a written plan for such community service to be signed by the Respondent and the director of said program by December 15, 1995. The plan of community service and performance of same shall be reported to Disciplinary Counsel and the Clerk of the Supreme Court of Appeals to determine compliance. Respondent shall submit a report with recommendations by December 1, 1996, to the Office of Disciplinary Counsel involving how to practically implement more accurate communications with clients in four (4) areas of potential concern, specifically, telephone conversation,

receipt and return of telephone messages, written reports to clients and memoranda making and conference with clients. Said report/recommendations shall be of publishable quality.

Respondent shall pay all costs associated with the investigation and litigation of this proceeding.

11/13/95
Date

R. Kemp Morton, Chairperson

11/20/95
Date

C. Blaine Myers, Esquire

11/21/95
Date

Debra K. Sullivan

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