

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 18861

This is a summary of a decision issued following the November 2008 hearings of the Disciplinary and Ethics Commission (“Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred prior to January 1, 2009. The Rules in effect at that time under the *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”) were Rules 101 through 705.

I. Issue Presented

Whether CFP® certificant (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he inaccurately completed a health insurance application for a client (“Client”), leading to rescission of the Client’s coverage and Respondent’s violation of a state statutory provision.

II. Findings of Fact Relevant to the Commission’s Decision

In April 2006, Respondent submitted a CFP® Renewal Application in which he disclosed his involvement in a 2006 state insurance department (“SID”) investigation.

In January 2005, Respondent received a health insurance application (“Application”) from the Client with missing height and weight information. Respondent filled in the information for the Client. In October 2005, the health insurance company (“Company”) learned that Respondent was being treated for conditions she had not disclosed on the Application, and canceled the Client’s coverage. The Client filed a complaint with the state Attorney General’s Office (“AG”) against the Company objecting to the rescission of her health insurance coverage.

In November 2005, the AG asked the Company to reinstate the Client’s health insurance coverage. The Company informed the AG that the Client had lied on the Application. The AG forwarded the case to the SID, which opened an investigation. The SID held a hearing and made findings that Respondent appealed in state court.

In July 2007, Respondent and the state Commissioner of Insurance signed a Stipulation and Order from the state court. According to the Stipulation and Order, Respondent admitted to the following:

1. In January 2005, Respondent completed, on behalf of the Client, a health insurance application. Respondent, having asked the Client if anything had changed, but without specifically asking her for her current height and weight, filled in the Client’s height and weight on the application and misstated the Client’s weight; and
2. Respondent’s conduct violated a state statutory provision.

Respondent stated on the application that the Client’s weight was 140 pounds. The Client’s actual weigh was 215 pounds.

Respondent later filed a request with another insurance company to place the client's coverage. In connection with that request, Respondent sent a letter to the insurance company explaining that when the Client gave him the Application with a blank height and weight portion, he transcribed this information from an application she had completed the previous year.

III. Commission's Analysis and Conclusions Regarding Rule Violations

- A. *Rule 102 – In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

The Commission found that Respondent inserted information on the Client's Application that materially misrepresented her weight, resulting in cancellation of her coverage. The Commission determined that Respondent's statement of the Client's weight on the Application was either false or misleading as to the Client's true weight. Because he made a false or misleading statement to the Company, Respondent violated Rule 102.

- B. *Rule 201 – A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.*

The Commission found that Respondent failed to exercise reasonable and prudent judgment in providing professional services because he: 1) transcribed onto the Client's Application information from the Client's file that she had completed the previous year, without verifying with the Client that this information was still accurate; 2) did not follow up with the Client in writing about the information he inserted on the Application; and 3) did not ask the Client to sign and date the sections completed by Respondent. Thus, Respondent violated Rule 201.

- C. *Rule 606(a) – In all professional activities a CFP Board designee shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities.*

The Commission found that Respondent failed to perform services in accordance with applicable laws, rules and regulations because he violated a state statutory provision. Thus, Respondent violated Rule 606(a) of the *Code of Ethics*.

- D. *Rule 606(b) – In all professional activities a CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board.*

The Commission found that Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board because he violated Rules 102, 201, 607, 606(a) and 701 of the *Code of Ethics* as described herein. Thus, Respondent violated Rule 606(b).

E. *Rule 607 – A CFP Board designee shall not engage in any conduct which reflects adversely on his or her integrity or fitness as a CFP Board designee, upon the marks, or upon the profession.*

The Commission found that Respondent inserted false or misleading information on the Client's Application when he inaccurately stated the Client's weight. The Commission found that such conduct reflects adversely on Respondent's fitness and integrity, upon the marks and upon the profession. Thus, Respondent violated Rule 607.

F. *Rule 701 – A CFP Board designee shall provide services diligently.*

The Commission found that Respondent was not thorough when he: 1) transcribed onto the Client's Application information from the Client's file that she had completed the previous year, without verifying with the Client that this information was still accurate; and 2) did not follow up with the Client in writing about the information he inserted on her application; and 3) did not ask the Client to sign and date the sections completed by Respondent. The Commission found that because he was not thorough, Respondent failed to provide services diligently. Thus, Respondent violated Rule 701.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") provides grounds for discipline for any act or omission which violates the *Code of Ethics*. Respondent submitted an Offer of Settlement to the Commission in which he stated his willingness to accept a Private Censure. The Commission rejected the Offer of Settlement because it determined that Respondent's actions constituted grounds for a higher discipline than a Private Censure. The Commission made a Counter Offer to Respondent in which it proposed a Public Letter of Admonition. Respondent accepted the Counter Offer and agreed to the Public Letter of Admonition.

The Commission considered as a mitigating factor that the transaction provided no gain to Respondent, in that no insurance sale was made, and imposed no loss to the Client because Respondent refunded the Client's fees.

The Commission considered the following aggravating factors:

1. Despite Respondent's claims in his responses to CFP Board that he obtained the Client's weight information from the Client's file, Respondent provided no records reflecting a weight of 140 pounds for the Client, which shows a lack of diligence on Respondent's part;
2. Although Respondent indicated to CFP Board that there was no financial harm to the Client, the Client's health insurance coverage was cancelled; and
3. The matter was one of public record in the state.