

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against JAMES RANDALL BENHAM,
a Minnesota Attorney,
Registration No. 154726.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 11, 1984.

Respondent has committed the following unprofessional conduct warranting public discipline:

1. Respondent was employed by Augustine Medical, Inc. as general counsel from 1996 through 2004.
2. On September 8, 2004, respondent was adjudged guilty of a misdemeanor in United States District Court for knowingly and willfully aiding and abetting others in causing to be withheld from a medical distributor a material fact for use in determining rights to benefits and payments under a federal health care program (Medicare), in violation of 42 United States Code § 1320a-7b(a) and 18 United States Code § 2. Specifically, respondent pled guilty to knowingly and willfully aiding and abetting others in failing to disclose to Southern Medical Distributors the fact that a product manufactured by Augustine Medical, Inc. had been determined by a Medicare Fiscal Intermediary to be investigational. The fact that the product was considered to be

investigational was a material fact for use in determining rights to benefits and payments under the Medicare program.

3. Rule 19(a), RLPR, provides, in relevant part:

Criminal Conviction. A lawyer's criminal conviction in any American jurisdiction, even if upon a plea of nolo contendere or subject to appellate review, is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct for which the lawyer was convicted.

4. On June 29, 2004, respondent pled guilty to the crimes charged and, on September 8, 2004, he was adjudged guilty and sentenced to a three-year term of probation and fined \$100,000.

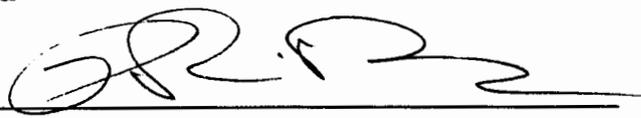
5. Respondent's conduct violated Rule 8.4(b) and (c), Minnesota Rules of Professional Conduct.

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: April 21, 2005.


KENNETH L. JORGENSEN
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and


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