

**REVIEW DEPARTMENT OF THE STATE BAR COURT
IN BANK**

In the Matter of)	08-C-12797
)	
)	
Gary M. Appelblatt)	RECOMMENDATION OF
)	SUMMARY DISBARMENT
)	
<u>A Member of the State Bar.</u>)	

On January 29, 2010, the State Bar filed a request for summary disbarment based on respondent Gary M. Appelblatt’s felony conviction of a crime involving moral turpitude per se. Appelblatt failed to file a response. The State Bar’s request is granted and we recommend that Appelblatt be summarily disbarred.

On August 17, 2009, Appelblatt pled nolo contendere to four counts of sexual battery by fraudulent representation in violation of Penal Code section 243.4, subdivision (c), and one count of attempted sexual battery by fraudulent representation in violation of Penal Code sections 664/243.4, subdivision (c). As a result of the felony conviction, we placed him on interim suspension effective November 23, 2009, and he has remained on interim suspension since that time. Since the time period for seeking direct review has expired and he has not sought review, the conviction is now final. (Cal. Rules of Court, rule 9.10(a).)

The record establishes that Appelblatt's conviction meets the criteria for summary disbarment under Business and Professions Code section 6102, subdivision (c). First Appelblatt's offenses constitute felonies. (Pen. Code, §§ 243.4, subd. (c) and 664.)

Second, we find that sexual battery by fraudulent representation is a crime that inherently involves moral turpitude. Section 243.4, subdivision (c), provides, in relevant part: "Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery." Under this statute, the defendant must fraudulently represent that the specific intimate touching he actually commits serves a professional purpose. (*People v. Babaali* (2009) 171 Cal.App.4th 982, 988.) "In the context of section 243.4, subdivision (c), unconscious does not have its ordinary or colloquial meaning. [Citation.] Instead, it means that the defendant tricks the victim into submitting to the touching based upon the fraudulent representation that 'the touching served a professional purpose.' (§ 243.4, subd. (c).) This fraud renders the victim 'unconscious of the (true) nature of the act (the intimate touching)' even though she agreed to the touching. [Citation.]" (*Id.* at p. 996.) We find that making a fraudulent representation in a professional capacity to trick a person into submitting to intimate touching is not in accordance with good morals. (See *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 86.) We need only rely on respondent's conviction of sexual battery by fraudulent representation in making this recommendation for summary disbarment.

When an attorney's conviction meets the requirements of Business and Professions Code, section 6102, subdivision (c), "the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for." (*In re Paguirigan* (2001) 25 Cal.4th 1, 7.) Disbarment is mandatory. (*Id.* at p. 9.)

We therefore recommend that respondent, Gary M. Appelblatt, State Bar No. 144158, be summarily disbarred from the practice of law in this state. We also recommend that Appelblatt be ordered to comply with rule 9.20 of the California Rules of Court and to perform the acts specified in paragraphs (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court's order.

Finally, we recommend that costs be awarded to the State Bar in accordance with Business and Professions Code, section 6086.10, such costs being enforceable both as provided in Business and Professions Code, section 6140.7 and as a money judgment.

Presiding Judge