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**State Bar Court of California**  
**Hearing Department**  
**Los Angeles**

Counsel For The State Bar  <b>Miho Murai</b> <b>Deputy Trial Counsel</b> <b>1149 S. Hill Street</b> <b>Los Angeles, CA 90015-2299</b> <b>213-765-1219</b>	Case Number (s) <b>05-O-03910</b> <b>06-O-14188</b>	(for Court's use)  <div align="center">   <b>SEP 15 2008</b>          STATE BAR COURT          CLERK'S OFFICE          LOS ANGELES       </div>
Bar # <b>235178</b> Counsel For Respondent  <b>Michael Wine</b> <b>301 N. Lake Ave., Suite 800</b> <b>Pasadena, CA 91101</b> <b>626-796-6688</b>	<div align="center"> <b>PUBLIC MATTER</b> </div>	
Bar # <b>58657</b>		
In the Matter Of: <b>MICHAEL PATRICK DOLAN</b>	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
Bar # <b>142576</b>  A Member of the State Bar of California (Respondent)		

**Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.**

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **December 11, 1989**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **21** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
  - ☒ costs to be paid in equal amounts prior to February 1 for the following membership years: **two (2) billing cycles following the effective date of the Supreme Court Order.**  
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - ☐ costs entirely waived

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
  - (b) ☐ Date prior discipline effective
  - (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
  - (d) ☐ Degree of prior discipline
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☒ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property. **In the Patino matter, Respondent misappropriated \$1,986.24 in client funds and has been unable to account for the misappropriation.**
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **In the Hayne matter, Hayne's case was dismissed because Respondent filed the complaint after the statute of limitations had run.**
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **Respondent's misconduct evidences multiple acts of**

wrongdoing.

- (8) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. **Respondent has been candid and cooperative with the State Bar throughout the investigation and disciplinary proceedings.**
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☒ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature. **During the Patino matter, Respondent was experiencing marital difficulties with his former wife, who was also his office manager and sole employee.**
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

**Although the misconduct herein is serious, Respondent has had no prior record of discipline since being admitted to the practice of law on December 11, 1989.**

**At the time of the misconduct, Respondent suffered from severe financial stress, including enormous tax debts which he discovered after he and his wife separated.**

**At the time of the misconduct, Respondent suffered from depression and anxiety which directly resulted in his inability to properly oversee his client trust account.**

**From approximately 1999 to 2007, Respondent served as a Judge Pro-Tempore for the Kern County Superior Court.**

**In 2006, Respondent served as a Judge Pro-Tempore for the Bakersfield Traffic Court.**

**From 2003 until the fall of 2006, Respondent volunteered as a Little League coach and donated money throughout the years to NW Baseball.**

**D. Discipline:**

- (1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of **two (2) years**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

- (b) ☒ The above-referenced suspension is stayed.

- (2) ☒ **Probation:**

Respondent must be placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

- (3) ☒ **Actual Suspension:**

- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **six (6) months**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to

this stipulation.

- iii. ☐ and until Respondent does the following:

### E. Additional Conditions of Probation:

- (1) ☒ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.  
☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

(10) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions

☐ Law Office Management Conditions

☐ Medical Conditions

☒ Financial Conditions

#### F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .
- (2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: .
- (5) ☐ **Other Conditions:**

In the Matter of  
**MICHAEL PATRICK DOLAN**

Case number(s):  
**05-O-03910 & 06-O-14188**

A Member of the State Bar

## Financial Conditions

### a. Restitution

- ☐ Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- ☐ Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

### b. Installment Restitution Payments

- ☐ Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

### c. Client Funds Certificate

- ☒ 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
  1. the name of such client;
  2. the date, amount and source of all funds received on behalf of such client;
  3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
  4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
  1. the name of such account;
  2. the date, amount and client affected by each debit and credit; and,
  3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
  - ii. the person on whose behalf the security or property is held;
  - iii. the date of receipt of the security or property;
  - iv. the date of distribution of the security or property; and,
  - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

- ☒ Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.



**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW, AND DISPOSITION**

IN THE MATTER OF:       MICHAEL PATRICK DOLAN

CASE NUMBER(S):       05-O-03910 & 06-O-14188

**WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES  
AND STIPULATED FACTS AND CULPABILITY**

The parties waive any variance between the Notices of Disciplinary Charges filed on September 28, 2006 and July 24, 2007 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

**FACTS AND CONCLUSIONS OF LAW**

Michael Patrick Dolan ("Respondent") admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

**Facts**

1. Respondent was admitted to the practice of law in the State of California on December 11, 1989, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

**Facts of Case No. 05-O-03910**

2. At all times relevant herein, Respondent maintained a client trust account at San Joaquin Bank, designated account number 21052825 ("client trust account").
3. In April 2002, Armenius Patino ("Patino") was involved in an automobile accident.
4. On September 10, 2002, Patino employed Respondent to pursue a civil action on his behalf arising from the April 2002 automobile accident. Respondent was retained on a contingency fee basis and was entitled to forty (40) percent of any recovery obtained on Patino's behalf.
5. On April 14, 2003, Respondent filed a civil action on behalf of Patino entitled, Patino v. Brian Shepherd, Lauren Dill, Kern County Superior Court, case no. S-1500-CV-249939 (the "personal injury action").

6. On August 22, 2003, Respondent submitted a Request for Dismissal to the court in the personal injury action.
7. On September 13, 2003, Respondent agreed to settle the personal injury action on Patino's behalf for \$7,500.00.
8. On September 19, 2003, Patino signed the settlement and release in the personal injury case.
9. In October 2003, Respondent received a settlement draft in the amount of \$7,500.00 from Mercury Insurance as settlement of Patino's personal injury action.
10. On October 10, 2003, Respondent deposited the settlement draft for \$7,500.00 into his client trust account.
11. On October 24, 2003, Respondent provided Patino with a proposed disbursement of the \$7,500.00 in settlement funds. Patino agreed to the distribution proposed by Respondent, which included \$3,000.00 to Respondent as fees as well as \$442.00 to Respondent for costs. Pursuant to Respondent's proposed disbursement, Respondent withheld \$2,000.00 to pay the medical lien held by Dr. Herrera of Interactive Health Care Medical Group.
12. On October 24, 2003, Respondent issued a check to Patino for \$2,058.00 as Patino's portion of the settlement funds in the personal injury action.
13. As of October 24, 2003, Respondent was required to maintain \$2,000.00 in settlement funds on behalf of Patino in his client trust account to pay Dr. Herrera's medical bill.
14. As of July 23, 2004, Respondent had not disbursed any of the \$2,000.00 in settlement funds to Patino or to anyone on Patino's behalf.
15. On July 23, 2004, the balance in Respondent's client trust account fell to \$1,073.26, which was \$926.74 below the amount Respondent was required to maintain on behalf of Patino in his client trust account.
16. On or about February 23, 2005, Patino sent a letter to Respondent regarding his failure to respond to Patino's calls and his failure to pay Patino's medical bills. In his February 23, 2005 letter, Patino stated that he had been trying to reach Respondent since November 11, 2004 without any success. Specifically, Patino stated that he had telephoned Respondent's office on numerous occasions, but Respondent did not respond to his telephone calls. In the February 23, 2005 letter, Patino told Respondent he was supposed to pay the hospital and ambulance bills, but the bills were never paid. Respondent received Patino's letter, but failed to respond to it.

17. As of February 25, 2005, Respondent had not disbursed any of the \$2,000.00 in settlement funds withheld to pay Dr. Herrera's medical bill to Patino or to anyone on Patino's behalf.
18. On February 25, 2005, the balance in Respondent's client trust account fell to \$13.76, which was \$1,986.24 below the amount Respondent was required to maintain on behalf of Patino in his client trust account.
19. In March 2005, Respondent issued a check for \$453.99 on Patino's behalf as payment of the ambulance service bill arising out of the April 2002 automobile accident.
20. On September 23, 2005, Respondent issued a check for \$2,000.00 to Dr. Herrera on Patino's behalf as payment of the outstanding balance owed to the medical provider.

#### **Conclusions of Law of Case No. 05-O-03910**

1. By misappropriating \$1,986.24 in client funds belonging to Patino, Respondent committed an act involving moral turpitude, dishonesty, or corruption in willful violation of Business and Professions Code section 6106.
2. By not maintaining \$1,986.24 in client funds received on behalf of Patino in his client trust account, Respondent failed to maintain client funds in a client trust account in willful violation of rule 4-100(A) of the Rules of Professional Conduct.
3. By failing to promptly respond to Patino's February 23, 2005 letter, Respondent failed to respond promptly to reasonable status inquiry of a client in which Respondent had agreed to provide legal services in willful violation of Business and Professions Code section 6068(m).
4. By failing to timely negotiate and pay Dr. Herrera's medical lien on behalf of Patino, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A) of the Rules of Professional Conduct.

#### **Facts of Case No. 06-O-14188**

21. On February 21, 2005, Russell D. Hayne ("Hayne") had heart surgery performed by Dr. Peter Nalos ("Dr. Nalos") at Bakersfield Heart Hospital.
22. On March 1, 2005, the wound site became infected and was bleeding.
23. Between March 1, 2005 and March 9, 2005, Hayne consulted with David Stiles ("Stiles") of the Law Offices of Chain-Younger, Cohn and Stiles regarding a possible medical malpractice action against Dr. Nalos. On March 9, 2005, Stiles

advised Hayne by letter that his office would not take Hayne's case. Stiles advised Hayne of Code of Civil Procedure section 340.5, the applicable statute of limitations for medical malpractice, as well as California Government Code section 911.2. Stiles advised Hayne to consult other counsel immediately.

24. On March 12, 2005, Hayne had exploratory surgery performed by Dr. Marvin J. Derrick ("Dr. Derrick"). A sponge was found underneath the surgical wound site, which Dr. Derrick removed.
25. On March 14, 2005, Hayne employed Respondent to represent him in a medical malpractice matter. Respondent was retained on a contingency fee basis. There was an undated signed written retainer agreement.
26. On May 13, 2005, Respondent sent a letter to Dr. Nalos and his malpractice carrier, advising that he would pursue a medical malpractice matter on behalf of Hayne.
27. On June 15, 2005, Respondent sent a notice pursuant to Code of Civil Procedure section 364, advising providers including Dr. Nalos, Bakersfield Heart Hospital and Central Cardiology aka CCMC ("CCMC") of his intent to bring action on behalf of Hayne. When Respondent sent this notice to the defendants, he incorrectly assumed that this notice would extend the expiration of the statute of limitations for ninety (90) additional days.
28. On December 29, 2005, Respondent issued a personal check in the sum of \$750.00 to Hayne as an advance against settlement of Hayne's case.
29. From late December 2005 until July 10, 2006, Hayne heard nothing from Respondent.
30. On April 27, 2006, more than one year after the discovery of the sponge in the wound site and more than one year after Respondent was employed by Hayne, Respondent filed a complaint against Dr. Nalos, Bakersfield Heart Hospital and Central Cardiology aka CCMC. Respondent attached Dr. Derrick's March 16, 2005 letter, which described the removal of the sponge, as Exhibit "A" to the complaint. Respondent was grossly negligent for not knowing that he had filed Hayne's complaint untimely. Respondent did not advise Hayne that he had filed the complaint more than a year after the discovery of the sponge in the wound site and more than a year after Hayne had employed him.
31. On July 10, 2006, Respondent contacted Hayne. Respondent advised Hayne that Dr. Nalos refused to settle the case. Respondent further advised Hayne that he might be able to get a \$5,000.00 settlement. Hayne declined that amount. Respondent informed Hayne that it would take a lot of time and money to handle Hayne's case and that he no longer wanted to continue to handle his case. Respondent further advised Hayne, in part, that the value of his case had

decreased significantly. At the time Respondent advised Hayne of this, the complaint had been filed untimely, and was already potentially subject to a motion for summary judgment. Respondent did not advise Hayne that there was any issue regarding the date the complaint was filed or any problem regarding the applicable statute of limitations.

32. On July 12, 2006, Hayne again consulted with the Law Offices of Chain-Younger, Cohn and Stiles, and specifically spoke to David Cohn ("Cohn") regarding his medical malpractice case.
33. On July 17, 2006, Dennis Thelen ("Thelen"), counsel for Dr. Nalos and CCMC, served Respondent by mail a First Request for Production and a First Set of Form Interrogatories, directed to Hayne on behalf of Dr. Nalos and CCMC. Respondent received the written discovery requests from Thelen.
34. From July 17, 2006 until August 16, 2006, Respondent did not advise Hayne that he had been served with written discovery requests.
35. On July 18, 2006, Thelen served Respondent by mail a Notice of Taking Deposition of Hayne. The deposition was scheduled to take place on August 3, 2006.
36. A few days prior to the August 3, 2006 deposition, Respondent advised Thelen that he was seeking to obtain other counsel for Hayne, and that the new counsel would be Cohn. At the time that Respondent advised Thelen of this, Respondent knew or should have known in the absence of gross negligence that Cohn had not yet agreed to take Hayne's case. The deposition was re-noticed for August 24, 2006.
37. On August 8, 2006, Cohn contacted Hayne and declined to take his case.
38. On August 14, 2006, Hayne consulted with attorney Brian Devine ("Devine") regarding his medical malpractice case. Devine agreed to evaluate Hayne's case.
39. On August 15, 2006, with Hayne's authorization, Devine sent Respondent a facsimile letter, requesting a copy of Hayne's file so that Devine could evaluate whether his office could substitute into the case. Devine also requested that Respondent call him. Respondent received the facsimile letter from Devine.
40. On August 16, 2006, Respondent spoke with Devine and advised him that discovery responses were outstanding and "probably overdue." Respondent also advised Devine that Hayne's deposition was set for August 24, 2006. Devine requested that Respondent fax him all outstanding discovery requests.
41. Thereafter, Respondent did not provide anything to Devine.

42. On or about August 17, 2006, Devine sent an e-mail to Hayne. Devine advised Hayne of the following: that he had spoken with Respondent on August 16, 2006; that Respondent advised Devine that he wanted to withdraw from the case because he was busy with other cases and did not see Hayne's case as having much value; that discovery was served on Respondent and Hayne's responses might be overdue; and that he had asked Respondent to provide him with all outstanding discovery requests and deposition notices, as well as to seek extensions of time to respond to discovery. Devine further expressed his concern about taking over a case that would be subject to sanctions, due to Respondent's failure to respond to outstanding discovery requests.
43. On August 18, 2006, Devine telephoned Respondent and left a message for Respondent to call him. Respondent did not return Devine's call. Devine then contacted Hayne by telephone and confirmed the details of his telephone conversation with Hayne in an e-mail sent later that day. In Devine's email to Hayne, Devine advised Hayne of the following: that Devine would not substitute into Hayne's case; that Respondent had not provided Devine any of the documents related to the case and, as a result, Devine could not evaluate it; that, based on Devine's preliminary review, it appeared that the lawsuit may be barred by the applicable statute of limitations; and that if the medical malpractice case was dismissed based on the fact that it was not filed within the statute of limitations, Hayne may have a legal malpractice claim against Respondent.
44. On August 23, 2006, Respondent advised Thelen that Cohn would not be substituting into the case. Respondent also advised Thelen that the pending written discovery requests would not be completed and that Respondent would not be attending the deposition scheduled on August 24, 2006. Respondent did not provide any date on which Hayne could be deposed nor any date on which the issue of Hayne's representation would be resolved. Respondent did not provide any written objection to the noticed deposition.
45. On that same date, August 23, 2006, Respondent spoke with Hayne and advised Hayne that he would have the complaint dismissed. Hayne did not want the complaint dismissed. Respondent then advised Hayne that he would reschedule the August 24, 2006 deposition and promised to meet with Hayne in the following week.
46. On August 24, 2006, Thelen filed motions to compel Hayne's responses to the written discovery requests and his attendance at the deposition. The hearing on Thelen's motions to compel was set for September 25, 2006.
47. From August 24, 2006 until September 6, 2006, Hayne heard nothing from Respondent. On September 6, 2006, Hayne sent Respondent a letter by certified mail to inquire about the status of his case. Respondent received Hayne's letter.

48. From August 24, 2006 until September 19, 2006, Respondent did not inform Hayne of the motions to compel.
49. On September 10, 2006, Hayne filed a State Bar complaint against Respondent.
50. On September 19, 2006, Respondent sent a letter to Hayne advising him that his deposition had been rescheduled for October 4, 2006. Respondent requested that Hayne come to his office on September 26, 2006 at 5:00 pm to get the discovery completed. Respondent advised Hayne that there was a motion for sanctions for failure to comply with the discovery requests.
51. Respondent did not provide any response to the motions to compel nor did he appear at the hearing on September 25, 2006 on behalf of Hayne, although Hayne himself appeared. The Court granted the motions to compel Hayne's deposition and Hayne's written responses to discovery.
52. On September 26, 2006, Hayne did not come to Respondent's office to complete the written discovery requests as Respondent had requested. The meeting was never rescheduled since Respondent became aware on September 29, 2006 that Hayne had filed a State Bar complaint against him, and as a result, Respondent wanted to withdraw from Hayne's case.
53. On September 28, 2006, Thelen filed a motion for summary judgment on behalf of Dr. Nalos and CCMC and served it on Respondent by mail. The hearing on the motion for summary judgment was set for December 18, 2006. Respondent received the motion, but did not promptly advise Hayne of the motion.
54. In late September 2006, Hayne provided Respondent with the answers to the Form Interrogatories.
55. On October 1, 2006, Respondent sent Hayne a letter advising him, as follows: "As I informed you the fact that a complaint with the State Bar has been filed creates a conflict in my representing you further in the case . . . I realize from [sic] our conversation and the two faxes that you wish me to proceed with representing you in your case. However, because of the conflict I must withdraw. . . ." Respondent did not mention in his October 1, 2006 letter to Hayne that he had been served with a motion for summary judgment.
56. On October 3, 2006, Hayne sent Respondent a letter informing him that he understood that Respondent was going to file a motion to withdraw as his attorney, but that until the court had ruled on such a motion to withdraw, Respondent was still his attorney and he expected Respondent to respond to all outstanding discovery. Hayne further informed Respondent that he had already given Respondent his answers to the Form Interrogatories, but that Respondent had not yet provided him with any other discovery requests, even though on

September 27, 2006, Respondent had informed Hayne that there were further discovery to be answered. Respondent received Hayne's letter.

57. On October 3, 2006, Respondent filed his first motion to withdraw as Hayne's counsel. A hearing on that motion was set for October 12, 2006.
58. On October 5, 2006, Respondent sent Hayne a letter advising him that because of the conflict, he could not do any further work on his case. Respondent further advised Hayne that his deposition had been rescheduled for October 20, 2006, and that the next court date was October 29, 2006. Respondent did not mention in his October 5, 2006 letter to Hayne that he had been served with a motion for summary judgment.
59. On October 6, 2006, Hayne sent Respondent a letter informing him that Hayne would be appearing at the October 12, 2006 hearing to oppose Respondent's motion to withdraw. Hayne further informed Respondent that his request to withdraw prejudiced him because of the immediate need to respond to the outstanding discovery. Hayne further informed Respondent that he had provided Respondent with answers to the Form Interrogatories and assumed Respondent had provided formal responses to this discovery request to the defendants. Respondent received Hayne's letter, but did not respond to it.
60. On October 12, 2006, the court denied Respondent's motion to withdraw. The court advised Respondent that he had failed to comply with California Code of Civil Procedure section 284 and rule 376 of the California Rules of Court.
61. On October 16, 2006, Hayne sent Respondent a letter reminding him of the October 20, 2006 deposition and asking him whether Respondent intended to prepare Hayne for the deposition. In the letter, Hayne reiterated that Respondent was still his attorney and that Hayne expected Respondent to protect his interests. Respondent received Hayne's letter, but did not respond to it.
62. On October 18, 2006, Respondent filed an ex parte application to shorten the time for a hearing on the motion to withdraw. The ex parte hearing was held on October 19, 2006. Respondent, Hayne, and Thelen appeared. Respondent's ex parte application was denied.
63. On October 30, 2006, Respondent filed another motion to be relieved as Hayne's counsel, asserting conflict, breakdown of communication, refusal of Hayne to allow Respondent to withdraw, and his claim that Hayne had on "several occasions" informed him that he had retained other counsel, as grounds for the withdrawal. In his motion, Respondent noted that there was a motion for summary judgment pending. A hearing on Respondent's motion was set for November 20, 2006.



64. On November 20, 2006, a hearing on Respondent's motion was held, and the court concluded that there was an adversarial relationship between Respondent and Hayne because of the complaint with the State Bar. The court then granted Respondent's motion, and ordered Respondent to provide the complete file to Hayne no later than November 27, 2006. The hearing on the summary judgment motion was reset for January 26, 2007.
65. On January 26, 2007, the motion for summary judgment was granted in favor of all defendants and against Hayne.

### **Conclusions of Law of Case No. 06-O-14188**

5. By failing to timely file Hayne's lawsuit before the statute of limitations had run, by failing to advise Hayne that his lawsuit was not timely filed and that the statute of limitations had run, by failing to provide responses to defendants' discovery requests, by failing to respond to the motions to compel Hayne's responses to the written discovery and his attendance at the deposition, by failing to attend the September 25, 2006 hearing on the motions to compel on behalf of Hayne, by failing to provide any documents to Devine as requested, and by failing to respond to the motion for summary judgment, Respondent willfully, recklessly or repeatedly failed to perform legal services with competence.

### **DISMISSALS**

The parties respectfully request the Court to dismiss the following alleged violations in the interest of justice.

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
06-O-14188	Two	Business and Professions Code § 6106
06-O-14188	Three	Rules of Professional Conduct, rule 3-700(A)(2)

### **PENDING PROCEEDINGS**

The disclosure date referred to on page two, paragraph A.(7), was August 28, 2008.

### **SUPPORTING AUTHORITY**

The State Bar submits that the following Standards for Attorney Sanctions for Professional Misconduct ("Standards") are applicable:

Standard 1.3 provides that the primary purposes of disciplinary proceedings and imposing sanctions for professional misconduct are, "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession."

Standard 1.6(a) provides that, where “two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed *shall be the more or most severe* of the different applicable standards” (emphasis added).

Standard 2.2(a) provides that “[c]ulpability of a member of willful misappropriation of entrusted funds or property shall result in disbarment. Only if the amount of the funds or property misappropriated is insignificantly small or if the most compelling mitigation circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a one-year actual suspension, irrespective of mitigating circumstances.”

Standard 2.3 provides that culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court or client shall result in actual suspension or disbarment, depending upon the extent of the harm to the victim, the magnitude of the act of misconduct, and the degree to which it relates to the practice of law.

Standard 2.4(b) provides that, “[c]ulpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.”

Finally, Standard 2.6(a) provides that a violation of section 6068 shall result in disbarment or suspension depending upon the gravity of the offense and or the harm, if any, to the victim.

The State Bar recognizes that a strict application of the Standards, particularly Standard 2.2(a), would result in at least a one-year period of actual suspension for Respondent’s misconduct. In this case, pursuant to Standard 1.6(b)(ii), the mitigating circumstances, most notably Respondent’s many years of practice with no prior record of discipline, demonstrate that the purposes of imposing sanctions set forth in Standard 1.3 will be properly fulfilled if a lesser degree of sanction than that called for by Standard 2.2(a) is imposed.

Respondent readily admits that he misappropriated \$1,986.24 in client funds belonging to Patino and failed to timely negotiate and pay Dr. Herrera’s medical lien on behalf of Patino. Although he accepts full responsibility of his actions, during the time that this occurred, Respondent was experiencing marital difficulties with his former wife, who was also his office manager and sole employee. Her responsibilities included paying bills, answering phones, assisting in the preparation of documents, returning phone calls when Respondent was unavailable, and interfacing with medical providers in Respondent’s personal injury cases. Because of their marital problems, she stopped working at his office, which resulted in Respondent having to handle all aspects of his law office practice on his own. Consequently, Respondent erroneously believed that he

had negotiated and paid Dr. Herrera's medical lien and thereby failed to maintain client funds belonging to Patino in his client trust account.

Also, during the period of misconduct in the Patino matter, Respondent suffered from depression and anxiety due to his marital problems and financial stress, which affected his ability to properly oversee his client trust account.

Although there are two client matters involved in this disciplinary proceeding, the most significant misconduct pursuant to the Standards is the misappropriation. Turning to applicable case law for guidance, a single act of misappropriation typically results in at least a one-year period of actual suspension. See *In the Matter of Dyson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 280; see also *Hipolito v. State Bar* (1989) 48 Cal. 3d 621. In *In the Matter of Dyson, supra*, the Review Department recommended three years stayed suspension and probation, with a one-year actual suspension for misappropriation of about \$4,600.00 in client funds. Dyson, who had been practicing law for eight years without a prior record of discipline, failed to maintain the \$4,600.00 owed to a medical provider, placed them in his personal account, and delayed payment to the doctor for a year and a half after demand for payment. The Review Department rejected the referee's recommendation of six months actual suspension, finding that it was not supported by strong mitigating evidence, and found that one-year actual suspension was appropriate where the attorney had committed a single act of misappropriation and had fully participated in the disciplinary proceedings. There were no findings in aggravation.

In *Hipolito, supra*, the Supreme Court ordered three years stayed suspension and probation, with a one-year actual suspension for commingling and misappropriation of \$2,000.00 in settlement funds belonging to a client and abandonment of another client. At the time of the misconduct, Hipolito suffered severe financial difficulties as well as a bitter and protracted dissolution of marriage and a brief hospitalization for severe chest pains caused by stress. In aggravation, there was harm to two clients. In mitigation, the attorney had no prior record of discipline during eight years of practice and demonstrated candor and cooperation.

There are circumstances, however, in which a single act of misappropriation with strong mitigating evidence can result in less discipline than the minimum set forth in Standard 2.2(a). For example, in *Bates v. State Bar* (1990) 51 Cal. 3d 1056, the attorney misappropriated about \$1,200.00 from a client's personal injury settlement. He also misrepresented to the client's new attorney the status of the trust account. The attorney received three years stayed suspension and three years probation with six months actual suspension. In aggravation, the court noted harm to the client and Bates' refusal to make restitution until the State Bar referee issued his decision. In mitigation, Respondent had no prior in fourteen years of practice. The court also gave great weight to the Review Department's findings that Bates had met his burden in establishing successful rehabilitation from the alcoholism he suffered at the time of the misconduct.

Here, like in *In the Matter of Dyson, Hipolito, and Bates*, Respondent's misconduct involves a single act of misappropriation of approximately \$2,000.00 owed to

a medical provider and a failure to perform legal services in another client matter. Unlike Dyson and Hipolito, who had only been practicing law for eight years prior to the misconduct, Respondent has been practicing law for over fourteen years without any priors, which constitutes strong mitigation. Also, Respondent has served as Judge Pro-Tempore for the Kern County Superior Court and the Bakersfield Traffic Court for many years. Moreover, during the time of misconduct, Respondent was suffering from severe financial difficulties, experiencing marital problems, and suffering from depression and anxiety. As such, Respondent's strong mitigating circumstances justify a departure from the Standards like in *Bates*.

#### **COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that, as of August 28, 2008, the costs in this matter is \$3,654.00. Respondent further acknowledges that should this stipulation be rejected or should relief from this stipulation be granted, the costs in this matter may increase due to the costs of further proceedings.


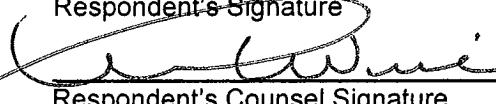

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In the Matter of  
**MICHAEL PATRICK DOLAN**

Case number(s):  
**05-O-03910 & 06-O-14188**

### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

<u>9/7/08</u> Date	 Respondent's Signature	<u>Michael Patrick Dolan</u> Print Name
<u>9/9/08</u> Date	 Respondent's Counsel Signature	<u>Michael Wine</u> Print Name
<u>9/10/08</u> Date	 Deputy Trial Counsel's Signature	<u>Miho Murai</u> Print Name

(Do not write above this line.)

In the Matter Of  
**MICHAEL PATRICK DOLAN**

Case Number(s):  
**05-O-03910 & 06-O-14188**

### ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public,  
IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without  
prejudice, and:



The stipulated facts and disposition are APPROVED and the DISCIPLINE  
RECOMMENDED to the Supreme Court.



The stipulated facts and disposition are APPROVED AS MODIFIED as set forth  
below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.



All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify  
the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies  
or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The  
effective date of this disposition is the effective date of the Supreme Court order herein,  
normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

9/12/08

Judge of the State Bar Court

**RICHARD A. HONN**

## CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 15, 2008, I deposited a true copy of the following document(s):


### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:
- MICHAEL E WINE  
301 N LAKE AVE STE 800  
PASADENA CA 91101-5113
- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- ☐ by overnight mail at , California, addressed as follows:
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.
- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

MIHO MURAI, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 15, 2008.

  
Angela Owens-Carpenter  
Case Administrator  
State Bar Court