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State Bar Court of California
Hearing Department
Los Angeles

<p>Counsel For The State Bar</p> <p>Suzan J. Anderson (Bar # 160559) Supervising Trial Counsel Nathan A. Reiersen (Bar # 204129) Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015</p> <p>Bar #</p>	<p>Case Number (s) 05-O-04028, 06-O-10998, 06-O-10999, 06-O-12131, 06-C-12297, 06-O-14667, 07-O-11983 and 07-O- 13310-DFM</p>	<p>(for Court's use)</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>DEC 18 2008</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Ellen A. Pansky, Esq. (Bar # 77688) James I. Ham, Esq. (Bar # 100849) Pansky & Markle Attorneys at Law 1010 Sycamore Avenue, Suite 101 South Pasadena, CA 91030</p> <p>Bar #</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Payam Mark Shayani</p> <p>Bar # 208334</p> <p>A Member of the State Bar of California (Respondent)</p>		

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:

- Respondent is a member of the State Bar of California, admitted **September 8, 2000**.
- 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.
- 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 **19** pages, not including the order.
- A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



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- (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: **three billing cycles following the effective date of the Supreme Court order in this matter.**
(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.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (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.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension

- (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. **See attachment, page 13.**
- (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.
- (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. **See attachment, page 13.**
- (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. **See attachment, page 13.**
- (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.
- (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

See attachment, page 13.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **one (1) year**.

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 **forty-five (45) days**.

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:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> 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: _____

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- (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:**

(Do not write above this line.)

Attachment language begins here (if any):

See "ATTACHMENT TO STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION."

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Payam Mark Shayani

CASE NOS: **05-O-04028, 06-O-10998, 06-O-10999, 06-O-12131, 06-O-12297, 06-O-14867, 07-O-11983 and 07-O-13310**

FACTS AND CONCLUSIONS OF LAW:

Respondent Payam Mark Shayani ("Respondent") admits that the following facts are true and that he is culpable of the violations of the specified statutes as follows:

Case Nos. 05-O-04028, 06-O-10998, 06-O-10999, 06-O-12131, 06-C-12297, 06-O-14867, 07-O-11983 and 07-O-13310

Procedural Background in Conviction Proceeding (06-C-12297):

1. Case No. 06-C-12297 is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.

2. On December 29, 2006, in the matter of *People of the State of California v. Payam Shayani*, San Diego County Superior Court Case No. CD 198237, Respondent pled guilty to three misdemeanor counts of violations of Unemployment Insurance Code §2118 (alleging that between April 1, 2003 and January 1, 2004, Respondent unlawfully failed to withhold and/or pay over State Income Tax for one part-time employee as required pursuant to §13020 and division 6 of the California Unemployment Insurance Code); Labor Code §3700.5 (alleging that between January 21, 2003 and October 25, 2003, Respondent failed to secure workers compensation insurance for his employees as required by law); and Business and Professions Code §16240 (alleging that between April 29, 2005 and July 7, 2005, Respondent violated this statute which provides that "Every person who practices, offers to practice, or advertises any business, trade, profession, occupation, or calling, or who uses any title, sign, initials, card, or device to indicate that he or she is qualified to practice any business, trade, profession, occupation, or calling for which a license, registration, or certificate is required by any law of this state, without holding a current and valid license, registration, or certificate as prescribed by law, is guilty of a misdemeanor.").

3. On May 11, 2007, the Review Department of the State Bar Court ordered the initiation of a conviction referral matter for a hearing and decision recommending discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding violations of Unemployment Insurance Code §2118, Labor Code §3700.5, and Business and Professions Code §16240, of which Respondent was convicted, involved moral turpitude or other misconduct warranting discipline.

Facts (05-O-04028, 06-O-10998, 06-O-10999, 06-O-12131, 06-O-14867, 07-O-11983 and 07-O-13310):

4. Respondent holds a Doctor of Medicine degree (M.D.) issued by the University of Texas Medical Branch at Galveston on May 20, 2000. From July 1, 2001 through August 31, 2002, Respondent was granted a Postgraduate Resident Permit while enrolled in a resident program at St. Joseph Medical Center in Houston, Texas. At no time has Respondent ever been licensed as medical doctor, a physician or a surgeon by the Medical Board of California or in any other state other than Texas. At all times relevant to the facts set forth in this stipulation, Respondent was aware that he was not a licensed medical doctor, physician or surgeon in the State of California.

5. Between January 2003 and August 2004, Respondent maintained a website offering legal services only, www.obesitylawyer.com, that included the statement, "**Dr. Payam Shayani, M.D., J.D. is both a medical doctor with surgical training and an attorney.**" (Emphasis in original.) By doing so, Respondent held himself out to the public at large, including future clients Cassandra Pollard and Verdonna Mayes, as an M.D.

6. On January 13, 2003, Respondent submitted the Articles of Incorporation for his corporation, Law Offices of Payam Shayani, M.D., J.D., A Professional Law Corporation, to the Secretary of State for the State of California ("Secretary of State"). On or about January 21, 2003, the Articles of Incorporation for Respondent's corporation were endorsed and filed by the Secretary of State.

7. In January 2003, Respondent offered to represent Ms. Pollard in connection with an appeal of a denial by her health insurance carrier for gastric bypass surgery. Respondent sent Ms. Pollard a retainer agreement offering legal services only that stated at the top of the page 1,

"PAYAM SHAYANI, M.D., J.D.
ATTORNEY AT LAW AND MEDICAL DOCTOR"

In June 2004, Respondent offered to represent Ms. Mayes in connection with an appeal of her health insurance carrier's refusal to cover her prior gastric bypass surgery. Respondent sent Ms. Mayes a retainer agreement offering legal services only that stated at the top of the page 1,

"P. MARK SHAYANI, M.D., J.D.
Lawyer and doctor in full time
practice of law"

On the last page of both retainer agreements, under Respondent's signature it stated, "Payam Shayani, M.D., J.D." In September 2004, Ms. Mayes retained Respondent to represent her in a personal injury auto accident matter that occurred on August 21, 2004.

Ms. Mayes signed a separate retainer agreement that did not include any reference to "M.D.," "medical doctor" or other similar term. It is Respondent's position that he specifically recalls advising both Ms. Pollard and Ms. Mayes that he was acting exclusively in the capacity of an attorney and was not practicing medicine.

8. On April 3, 2003, Respondent submitted The State Bar of California Application for Issuance of Registration as a Law Corporation ("application") to the State Bar of California. Respondent listed the name of his corporation to be registered as a law corporation as, "Law Offices of Payam Shayani, M.D., J.D.". On page two of the application, Respondent signed a declaration that the name of his corporation was Law Offices of Payam Shayani, M.D., J.D., and declared under penalty of perjury that the application was true and correct. On or about that same date, Respondent signed Attachment C of the application, certifying that the name of his corporation, Law Offices of Payam Shayani, M.D., J.D., complied with the Rules of Professional Conduct, rule 1-400 and declared that the foregoing was true and correct under penalty of perjury.

9. Between March 2003 and September 2004, Respondent signed or caused to be signed medical liens on behalf of his clients with several medical providers, including South Bay Medical and Chirotherapy Associates, Inc., San Diego Advanced Medical Center, Open Air MRI, Rancho Vista Medical & Therapy Center, Inc., and HUB Medical Products, Inc. Respondent's signature appeared as "Payam Shayani, M.D. J.D." on the liens.

10. Between August 2003 and March 2004, Respondent sent letters to medical providers and insurance companies on behalf of his clients Martha Arias, Guadalupe Quezada and Gumildo Arroyo, wherein the letterhead of Respondent's letter stated:

"PAYAM SHAYANI, M.D., J.D.
LAWYER & DOCTOR IN FULL TIME
PRACTICE OF LAW."

11. In or about February 2004, Respondent executed a worker's compensation Disclosure Statement for his client Valeska Lopez, and also signed several letters to the State Compensation Insurance Fund ("SCIF"), as "Payam Shayani MD JD."

12. Between 2003 and 2004, Respondent placed advertisements in four (4) Yellow Pages directories in the State of California wherein Respondent represented he was an attorney and doctor, and included statements including that Respondent was a "Tough Lawyer & Medical Doctor," contained the phone number "888-DR-SHAYANI," and the statement "WHO BETTER TO REVIEW YOUR INJURY CLAIM THAN A LAWYER WHO IS ALSO A MEDICAL DOCTOR . . . LAW OFFICES OF PAYAM SHAYANI, M.D. J.D. & ASSOCIATES." In August 2004, Respondent was advised by the California Medical Board that he was not permitted to use the designation "Medical Doctor" or "M.D." because he was not licensed to practice medicine in California. Respondent then instructed advertising publishers to delete the terms "Medical Doctor," "M.D." or words of similar import from his advertising material.

13. On or about April 18, 2004, Respondent submitted the State Bar of California Law Corporation 2003 Annual Report and 2004 Renewal Form for his law corporation. On that same date, Respondent signed the form as being true under penalty of perjury. Question 5 of that form asked if the law corporation was requesting a new name and Respondent answered, "No." Question 6 of that form asked if the Articles of Incorporation had been changed and Respondent answered, "No."

14. On September 16, 2004, Respondent sent a letter to Ms. Mayes' medical provider, Modern Service Insurance Company ("MSI"), signed as "Payam Shayani MD JD." By utilizing this signature, Respondent represented to MSI that he was an M.D.

15. In September 2004 and June 2005, Ms. Mayes sent three letters to Respondent in relation to his representation of her auto accident case, in which she addressed him as: "Payam Shayani, M.D., J.D." and the salutation read: "Dear Dr. Shayani." The letters pertained to Respondent's representation of her. Respondent received the letters. Although it is Respondent's position that he recalls previously advising Ms. Mayes that he was not practicing medicine, he did not respond to Ms. Mayes, informing her again that he was not acting as a doctor but rather was serving exclusively as a lawyer.

16. On March 5, 2005, Respondent sent a letter to attorney Steven Oliver regarding Ms. Mayes' personal injury matter. The stationary stated:

"P. Mark Shayani, M.D., J.D.
Lawyer & Doctor in Full Time
Practice of Law"

17. On June 2, 2006, Respondent submitted the State Bar of California Law Corporation 2005 Annual Report and 2006 Renewal Form for his law corporation. On that same date, Respondent signed the form as being true under penalty of perjury. Question 3 of that form asked if the law corporation was requesting a new name and Respondent answered, "No." Question 4(a) of that form asked if the Articles of Incorporation had been changed and Respondent answered, "No."

18. On May 3, 2007, Respondent submitted the State Bar of California Law Corporation 2006 Annual Report and 2007 Renewal Form for his law corporation. On that same date, Respondent signed the form as being true under penalty of perjury. Question 3 of that form asked if the law corporation was requesting a new name and Respondent answered, "No." Question 4(a) of that form asked if the Articles of Incorporation had been changed and Respondent answered, "No."

19. On March 27, 2008, Respondent submitted the California Secretary of State Law Corporation Statement of Information for his law corporation. In that Statement of Information, Respondent listed his corporate name as, "Law Offices of Payam Shayani, M.D., J.D."

Conclusions of Law:

20. By making representations in letters, retainer agreements, medical liens, submissions to the California Secretary of State and the State Bar of California in the manners set forth hereinabove that he was an M.D., Respondent violated Business and Professions Code section 2054(a), which provides, "Any person who uses in any sign, business card, or letterhead, or, in an advertisement, the words 'doctor' or 'physician,' the letters or prefix 'Dr.,' the initials 'M.D.,' or any other terms or letters indicating or implying that he or she is a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, or that he or she is entitled to practice hereunder, or who represents or holds himself or herself out as a physician and surgeon, physician, surgeon, or practitioner under the terms of this or any other law, without having at the time of so doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon under this chapter, is guilty of a misdemeanor," in willful violation of Business & Professions Code section 6068(a).

21. By representing on his website www.obesitylawyer.com and in Yellow Pages advertisements in the manners set forth hereinabove that he was an M.D., Respondent made prohibited communications in willful violation of rule 1-400(D) of the Rules of Professional Conduct.

22. The parties stipulate that the facts and circumstances surrounding Respondent's guilty plea and convictions for violating Unemployment Insurance Code §2118 (alleging that between April 1, 2003 and January 1, 2004, Respondent unlawfully failed to withhold and/or pay over State Income Tax for one part-time employee as required pursuant to §13020 and division 6 of the California Unemployment Insurance Code); Labor Code §3700.5 (alleging that between January 21, 2003 and October 25, 2003, Respondent failed to secure workers compensation insurance for his employees as required by law); and Business and Professions Code §16240 (alleging that between April 29, 2005 and July 7, 2005, Respondent violated this statute which provides that "Every person who practices, offers to practice, or advertises any business, trade, profession, occupation, or calling, or who uses any title, sign, initials, card, or device to indicate that he or she is qualified to practice any business, trade, profession, occupation, or calling for which a license, registration, or certificate is required by any law of this state, without holding a current and valid license, registration, or certificate as prescribed by law, is guilty of a misdemeanor."), all misdemeanors, did not involve moral turpitude but involved other misconduct warranting discipline by the resulting violation of Business & Professions Code section 6068(a).

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MITIGATING CIRCUMSTANCES:

FACTS SUPPORTING MITIGATING CIRCUMSTANCES:

No Harm:

Respondent's misconduct did not harm a client, employee or the public.

Remorse:

In response to California Medical Board's notification on August 5, 2004 that Respondent could not use the "M.D." or "Medical Doctor" designation because he was not licensed by the Medical Board of California, Respondent promptly contacted advertising publishers, including several Yellow Pages publishers and his website manager, and instructed that they remove the words "M.D.," "Medical Doctor" or similar words. Although there were isolated instances in which the Yellow Pages publishers did not revise the ads, most advertising material was promptly corrected or removed. With minor exception, Respondent also ceased including the designation "M.D." on his office letterhead.

Good Faith:

It is Respondent's position that, upon the start of his solo law practice in California in 2003, Respondent believed in good faith that he was entitled to list his degrees and credentials in his legal advertisement and law firm written communications, as authorized by the express provisions of Business & Professions Code section 6158.2(f).

Additional Mitigating Circumstances:

Respondent has been in practice since 2000 without prior discipline.

Respondent never practiced medicine, examined, diagnosed, or treated anyone after completing his first residency year at St. Joseph Medical Center in Houston, Texas in July 2002. Respondent never offered medical services to any person after July 2002.

Respondent's use of the words "M.D.," "Medical Doctor", or similar designation was limited to the context of an attorney offering legal services. Respondent never used the designation "M.D." or similar designation in the context of a physician offering medical services.

Respondent's misconduct set forth herein, including his conviction of Unemployment Insurance Code section 2118 (based on Respondent's failure to withhold taxes for one part-time employee whom he believed was an independent contractor for whom taxes were not required to be withheld), Labor Code section 3700.5 (based on Respondent's failure to secure Worker's Compensation insurance for his office) and Business & Professions Code section 16240, did not involve moral turpitude.

PENDING PROCEEDINGS:

The disclosure date referred to in paragraph (A)(7) of the instant stipulation was December 3, 2008.

DISMISSALS:

Respondent stipulates that there was probable cause for the filing of the Notice of Disciplinary Charges and First Amended Notice of Disciplinary Charges in Case Nos. 05-O-04028, 06-O-10998, 06-O-10999, 06-O-12131, 06-O-14867, 07-O-11983 and 07-O-13310. The parties respectfully request the Court to dismiss with prejudice Counts One (1) through Forty-One (41) of the First Amended Notice of Disciplinary Charges, in whole, in the interest of justice.

WAIVER OF VARIANCE BETWEEN FIRST AMENDED NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY:

The parties waive any variance between the First Amended Notice of Disciplinary Charges filed on November 24, 2008, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of a Second Amended Notice of Disciplinary Charges.

COSTS OF DISCIPLINARY PROCEEDINGS:

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of December 8, 2008, the costs in this matter are \$15,344.71. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

AUTHORITIES SUPPORTING DISPOSITION:

The determination of the appropriate sanction must begin with the purposes of attorney discipline and Standard 1.3 of the *Standards for Attorney Sanctions for Professional Misconduct*. The primary purposes are the protection of the public, the courts and the legal profession, the maintenance of high professional standards and the preservation of public confidence in the profession. The rehabilitation of the member is a permissible object only if the imposition of rehabilitative sanctions (and arguably lesser sanctions) is consistent with the primary purposes.

Standard 1.6(a) provides that if 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 sanctions.

Standard 1.6(b)(ii) provides that the appropriate sanction shall be the sanction imposed unless mitigating circumstances are found to surround the particular act of misconduct found or acknowledged and the net effect of those mitigating circumstances, by themselves and in balance with any aggravating circumstances found, demonstrates that the purposes of imposing sanctions set forth in standard 1.3 will be properly fulfilled if a lesser degree of sanction is imposed. In that case, a lesser degree of sanction than the appropriate sanction shall be imposed or recommended.

Standard 2.6 provides that "Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3: (a) Section[] ...6068."

Standard 2.10 provides that culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a willful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

Standard 3.4 provides, "Final conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime's commission but which does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member."

The Supreme Court recognizes the importance of the standards to promote consistency, and uniform application, but as they are not binding on the Supreme Court, the Court has recognized that there may be bases, both under the facts and given mitigation, to deviate from them, as does the Review Department, where unique factors (and justice) may warrant. (See *Silverton v. State Bar* (2005) 36 Cal.4th 113; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980).

STATE BAR ETHICS SCHOOLS:

Because Respondent has agreed to attend State Bar Ethics School as part of this stipulation, Respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

In the Matter of
Payam Mark Shayani

Case number(s):
05-O-04028, 06-O-10998, 06-O-10999, 06-O-12131,
06-C-12297, 06-O-14867, 07-O-11983 and 07-O-
13310-DFM

A Member of the State Bar

Law Office Management Conditions

- a. Within _____ days/ _____ months/ _____ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within _____ days/ **six (6)** months/ _____ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than **six (6)** hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for _____ year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

In the Matter of
Payam Mark Shayani

A Member of the State Bar

Case number(s):
05-O-04028, 06-O-10998, 06-O-10999, 06-O-12131,
06-C-12297, 06-O-14867, 07-O-11983 and 07-O-
13310-DFM

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 reproval), 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:
- a. 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**

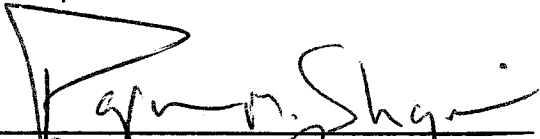

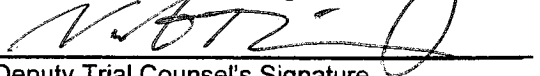
- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(Do not write above this line.)

In the Matter of Payam Mark Shayani	Case number(s): 05-O-04028, 06-O-10998, 06-O-10999, 06-O-12131, 06-C-12297, 06-O-14867, 07-O-11983 and 07-O-13310-DFM
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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>12-10-8</u> Date	 Respondent's Signature	Payam Mark Shayani Print Name
<u>12-11-08</u> Date	 Respondent's Counsel Signature	Ellen A. Pansky Print Name
<u>12/11/08</u> Date	 Deputy Trial Counsel's Signature	Nathan A. Reiersen Print Name

(Do not write above this line.)

In the Matter Of Payam Mark Shayani	Case Number(s): 05-O-04028, 06-O-10998, 06-O-10999, 06-O-12131, 06-C-12297, 06-O-14867, 07-O-11983 and 07-O-13310-DFM
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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.)**

12-15-08
Date



Judge of the State Bar Court
RICHARD A. PLATEL

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 December 18, 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:

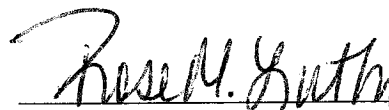
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ELLEN ANNE PANSKY, ESQ.
PANSKY & MARKLE
1010 SYCAMORE AVE #101
SOUTH PASADENA, CA 91030

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

NATHAN REIERSON & SUZAN ANDERSON, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 18, 2008.



Rose Luthi
Case Administrator
State Bar Court