


State Bar Court of California
Hearing Department
San Francisco

PUBLIC MATTER

Counsel For The State Bar Tammy M. Albertsen-Murray 180 Howard Street San Francisco, CA 94105 Bar # 154248	Case Number (s) 05-O-04676-PEM	(for Court's use) FILED  JUN 18 2009 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Jonathan I. Arons 101 Howard Street, #310 San Francisco, CA 94105 Bar # 111257	Submitted to: Settlement Judge	
In the Matter Of: WILLIAM L. FEARNside Bar # 98376 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 **May 22, 1981**.
- (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 **15** 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: **Costs to be paid in equal amounts prior to February 1 for the following three 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 **State Bar Court Case Nos. 95-O-18620; 96-O-6766 (Supreme Court Case no. S069721)**
- (b) ☒ Date prior discipline effective **July 31, 1998**
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **RPC 3-110(A) [failing to perform competently] in one client matter and rule RPC 3-700(D)(2) [failing to return unearned fees] in a separate client matter.**
- (d) ☒ Degree of prior discipline **One year suspension, stayed; two years probation with conditions, including restitution, MPRE and Ethics School.**
- (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below.
- (a) State Bar Court Case no. of second prior record of discipline: 83-I-739-FR
- (b) Date prior discipline effective: August 8, 1984
- (c) Rules of Professional Conduct/State Bar Act violations: Former RPC 7-104, threatening to present criminal charges to obtain an advantage in a civil action.
- (d) Degree of prior discipline: Private reproof
- (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. **Respondent improperly accepted and withheld monies from client, Eddie Parvanian, the absence of which caused Mr. Parvanian not to have access to funds for at least five (5) years.**
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(Do not write above this line.)

- (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 involved three separate matters, spread over at least five (5) years.**
- (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.
- (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.
- (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

Respondent made partial restitution to Mr. Parvanian on October 24, 2005 in the amount of \$5,120.82 under circumstances other than as described in C.(5) above. Respondent also agreed to further restitution as part of this Stipulation. (Please see Stipulation Attachment at pages 12-13.)

Respondent stipulated to the imposition of discipline, thus obviating the need for additional expenditure of State Bar and State Bar Court resources.

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: **Completes the restitution installment payments to Eddie Parvanian, including interest, as set forth in the Stipulation Attachment at pages 12-13.**

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

- (2) ☒ **Probation:**

Respondent must be placed on probation for a period of **three (3) 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 **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: **Completes the restitution installment payments to Eddie Parvanian, including interest, as set forth in the Stipulation Attachment at pages 12-13.**

(Do not write above this line.)

- (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 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 954.9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- ☐ No MPRE recommended. Reason:
- (2) ☒ **Rule 955-9.20, California Rules of Court:** Respondent must comply with the requirements of rule 955-9.20, 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 955-9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955-9.20, 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: William L. Fearnside
CASE NUMBERS: 05-O-04676, et al.

Facts and Conclusions of Law – The Watson Matter; Case No. 05-O-04676 (Counts One and Two)

- 1) On July 31, 1990, Thomas Watson, M.D. ("Dr. Watson") performed spinal surgery on Eddie Parvanian ("Parvanian"). Prior to surgery, Dr. Watson planned to perform a discectomy and fusion at C3-4 and C4-5. During surgery, Dr. Watson determined that it was only necessary to perform the fusion at C4-5.
- 2) On December 24, 1998, Parvanian was involved in a motor vehicle accident. On January 14, 1999, Parvanian sought treatment from Dr. Watson for the injuries sustained in the December 24, 1998 accident. At that time, Parvanian stated that prior to the December 24, 1998 accident, he had been pain free since the 1990 surgery. Dr. Watson referred Parvanian to Richard Goka, M.D. ("Dr. Goka") for treatment. From February 11, 1999, through May 17, 1999, Dr. Goka treated Parvanian. On March 23, 1999, Dr. Goka referred Parvanian to Jeryl Wiens, M.D. ("Dr. Wiens") for a second opinion. On April 22, 1999, Dr. Wiens examined Parvanian and determined that he "had nothing to offer" Parvanian. On November 5, 1999, Parvanian first discovered that Dr. Watson did not perform the fusion at C3-4.
- 3) On December 23, 1999, Parvanian filed a lawsuit in relation to the motor vehicle accident on December 24, 1998.
- 4) On January 18, 2000, Parvanian, *in pro per*, filed a complaint against Dr. Watson alleging medical malpractice ("Watson case"). From February 5, 2001 through September 7, 2001, attorney Timothy R. Gelegan represented Parvanian in the Watson case. From September 7, 2001, through October 31, 2001, Parvanian was *in pro per* in the Watson case.
- 5) On November 6, 2001, Parvanian was evaluated by Donald Huene, M.D. ("Dr. Huene"), at the request of the defense in the motor vehicle personal injury matter. This was Dr. Huene's only examination of Parvanian.
- 6) At all times relevant herein, a medical malpractice action must be brought "one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first." (C.C.P. § 340.5.)¹
- 7) On October 9, 2001, Parvanian hired respondent to represent him in the Watson case. At that time, Parvanian paid respondent \$15,000 as advanced fees for his services. On January 22, 2002, Parvanian gave respondent \$10,000 for advanced costs in the Watson case. There is no written fee agreement between respondent and Parvanian for respondent's representation in the Watson case. On October 31, 2001, respondent filed a substitution of attorney, substituting in as counsel of record for Parvanian in the Watson case.
- 8) On December 5, 2001, Dr. Watson's counsel sent a letter to respondent offering to waive costs in the Watson case in exchange for respondent's dismissal of the case. Respondent received the December 19, 2001 letter, but did not advise Parvanian about the offer. On

¹ This fact is applicable to the Watson, Weins and Goka matters, but is stated only once for purposes of overall brevity.

December 19, 2001, respondent sent a rejection of the offer to Dr. Watson's counsel. At no time did respondent advise Parvanian of the rejection.

9) On March 15, 2002, respondent filed a First Amended Complaint in the Watson case. On May 14, 2002, respondent filed a Second Amended Complaint in the Watson case.

10) On December 31, 2002, Dr. Watson filed a motion for summary judgment in the Watson case. Respondent received Dr. Watson's motion for summary judgment, but failed to file a response to it. At no time during the pendency of the Watson case did respondent advise Parvanian that Dr. Watson filed a motion for summary judgment, or that respondent failed to file a response to the motion for summary judgment.

11) On January 15, 2003, the court issued and respondent received a notice of hearing on Dr. Watson's motion for summary judgment to take place on February 6, 2003. Also on January 15, 2003, respondent reached an agreement with Dr. Watson's counsel wherein respondent agreed to dismiss the Watson case in exchange for Dr. Watson's agreement to waive costs, including attorney's fees. At no time during the pendency of the Watson case did respondent advise Parvanian of the agreement, or obtain Parvanian's consent to the agreement. On January 17, 2003 and without first advising Parvanian, respondent filed a request for dismissal with prejudice in the Watson case. At no time after filing the request for dismissal did respondent advise Parvanian that he requested dismissal of the Watson case.

12) On January 17, 2003, a dismissal was entered in the Watson case. At no time did respondent advise Parvanian that the Watson case had been dismissed. Instead, on March 21, 2003, Parvanian reviewed the court clerk's file in the Watson case and discovered on his own that respondent had filed a request for dismissal.

13) On March 28, 2003, Parvanian met with respondent and requested a refund of unearned fees. Respondent failed to provide a refund or an accounting to Parvanian for fees in the Watson case.

Conclusion of Law – Count One - Rules of Professional Conduct, rule 3-110(A) [Failure to Perform with Competence]

14) By failing to file a response to Dr. Watson's motion for summary judgment, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

Conclusion of law - Count Two - Business and Professions Code, section 6068(m) [Failure to Inform Client of Significant Development]

15) By failing to inform Parvanian of the December 5, 2001 offer to settle and his December 19, 2001 rejection of the offer to settle; by failing to inform Parvanian that Dr. Watson filed a motion for summary judgment in the Watson case; by failing to inform Parvanian that he did not file a response to Dr. Watson's motion for summary judgment; by failing to inform Parvanian of the January 15, 2003 agreement with Dr. Watson's counsel to dismiss the Watson case in exchange for a waiver of costs; by failing to inform Parvanian that he would file a request for dismissal in the Watson case; and by failing to inform Parvanian that he in fact filed a request for dismissal in the Watson case and failing to inform Parvanian that the Watson case had been dismissed, respondent failed to inform a client of significant developments in a matter in which respondent had agreed to provide legal services.

Facts and Conclusions of Law – The Huene Matter; case no. 05-O-04676 (Counts Three and Four)

- 16) Prior to August 1, 2002, Parvanian hired respondent to file a negligence action against Dr. Huene in relation to injuries Parvanian claimed he sustained during Dr. Huene's November 6, 2001 examination. Respondent was aware that any medical malpractice action related to Dr. Huene's examination of Parvanian must have been filed no later than November 6, 2002.
- 17) On August 2, 2002, respondent served a Notice of Intent to Sue pursuant to C.C.P. section 364 on Dr. Huene ("First Notice") based on alleged negligence on November 6, 2001. The First Notice states that respondent would file a complaint against Dr. Huene on November 6, 2002.
- 18) On October 18, 2002, respondent served a second Notice of Intent to Sue on Dr. Huene ("Second Notice") based on alleged negligence on November 6, 2002. The Second Notice is virtually identical to the First Notice; the only substantive change is the date of Dr. Huene's examination, which is incorrectly set forth as November 6, 2002. The Second Notice also states that respondent would file a complaint against Dr. Huene on November 6, 2002.
- 19) On January 23, 2003, respondent filed a medical malpractice complaint against Dr. Huene. ("Huene case"). The Complaint incorrectly alleges negligence on November 6, 2002, instead of the true examination date of November 6, 2001. At no time during the pendency of the Huene case did respondent advise Parvanian that he failed to file the complaint within the statutory period. On March 12, 2003, respondent filed a First Amended Complaint in the Huene case.
- 20) On April 23, 2003, Dr. Huene filed a motion for summary judgment on the basis that the complaint is barred by the statute of limitations. Respondent received Dr. Huene's motion for summary judgment, but failed to file a response to it. At no time during the pendency of the Huene case did respondent advise Parvanian that Dr. Huene filed a motion for summary judgment, or that respondent failed to file a response to the motion for summary judgment.
- 21) On June 13, 2003, respondent filed a request for dismissal with prejudice in the Huene case. At no time prior to filing the request for dismissal did respondent advise Parvanian that he was requesting dismissal of the Huene case. At no time after filing the request for dismissal did respondent advise Parvanian that he requested dismissal of the Huene case.
- 22) On June 13, 2003, a dismissal was entered in the Huene case. At no time did respondent advise Parvanian that the Huene case had been dismissed.

Conclusion of Law - Count Three - Rules of Professional Conduct, rule 3-110(A) [Failure to Perform with Competence]

- 23) By failing to file the complaint in the Huene case within the statutory period, which resulted in Parvanian's complaint against Dr. Huene being barred by the statute of limitations, and by failing to file a response to Dr. Huene's motion for summary judgment, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

Conclusion of Law – Count Four - Business and Professions Code, section 6068(m) [Failure to Inform Client of Significant Development]

- 24) By failing to inform Parvanian that he filed the complaint beyond the statutory period, by failing to inform Parvanian that Dr. Huene filed a motion for summary judgment in the Huene case, by failing to inform Parvanian that he did not file a response to Dr. Huene's motion for

summary judgment, by failing to inform Parvanian that he filed a request for dismissal in the Huene case and failing to inform Parvanian that the Huene case had been dismissed, respondent failed to inform a client of significant developments in a matter in which respondent had agreed to provide legal services.

Facts and Conclusions of Law – The Wiens Matter Case No. 05-O-04676 (Counts Five and Six)

25) At all times relevant herein, a medical malpractice action must be brought “one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.” (CCP § 340.5.)

26) On October 2, 2002, Parvanian hired respondent to file a medical malpractice action against Dr. Wiens in relation to his examination of Parvanian on April 22, 1999. At that time, Parvanian paid respondent \$4,900 as advanced fees for his services.

27) At the time of hire, respondent knew that Parvanian’s medical malpractice claim against Dr. Wiens was barred by the statute of limitations.

28) At no time during his representation of Parvanian in the Wiens matter did respondent advise Parvanian that his medical malpractice claim was barred by the statute of limitations.

29) On October 16, 2002, respondent served a Notice of Intent to Sue pursuant to CCP section 364 on Dr. Wiens (“Notice”) based on alleged negligence on April 22, 1999. The Notice states that respondent would file a complaint against Dr. Wiens on January 16, 2003.

30) Thereafter, respondent took no further action in the Wiens matter.

31) At no time did respondent refund any portion of the \$4,900 paid by Parvanian.

Conclusion of Law - Count Five - Business and Professions Code, section 6068(m) - [Failure to Inform Client of Significant Development]

32) By failing to inform Parvanian at the time of hire that his medical malpractice claim against Dr. Wiens was barred by the statute of limitations, respondent failed to inform a client of significant developments in a matter in which respondent had agreed to provide legal services.

Conclusion of Law - Count Six - Rules of Professional Conduct, rule 4-200(A) - [Unconscionable Fee]

33) By charging and collecting \$4,900 from Parvanian for representation in the medical malpractice case against Dr. Wiens, when respondent knew or should have known that the claim was barred by the statute of limitations and intentionally withholding such information from his client, and by failing to do any substantive work on the case, respondent charged and collected an unconscionable fee.

Facts and Conclusions of Law – The Goka Matter; Case No. 05-O-04676 (Counts Seven and Eight)

34) On November 1, 1999, Parvanian reviewed Dr. Goka’s records in relation to treatment he provided for the period of on February 11, 1999 through on May 17, 1999. Parvanian discovered Dr. Goka’s alleged negligence during his November 1, 1999 document review.

- 35) On October 2, 2002, Parvanian hired respondent to file a medical malpractice action against Dr. Goka for the treatment provided from on February 11, 1999, through on May 17, 1999. At that time, Parvanian paid respondent \$4,900 as advanced fees for his services.
- 36) At the time of hire, respondent knew that Parvanian's medical malpractice claim against Dr. Goka was already barred by the statute of limitations. At no time during his representation of Parvanian in the Goka matter did respondent advise Parvanian that his medical malpractice claim was barred by the statute of limitations.
- 37) On October 16, 2002, respondent served a Notice of Intent to Sue pursuant to C.C.P. section 364 on Dr. Goka ("Notice") based on alleged negligence from February 11, 1999 through May 17, 1999, which was not discovered until November 1, 1999. The Notice states that respondent would file a complaint against Dr. Goka on January 16, 2003.
- 38) On January 16, 2003, respondent filed a medical malpractice complaint against Dr. Goka ("Goka case"). The Complaint alleges that Parvanian did not discover Dr. Goka's negligence until November 1, 1999. On March 12, 2003, respondent filed a First Amended Complaint in the Goka case. The First Amended Complaint is virtually identical to the original complaint.
- 39) On April 4, 2003, Dr. Goka filed a demurrer to the First Amended Complaint, and every cause of action contained therein, on the basis that Parvanian's claim was barred by the statute of limitations. Respondent received Dr. Goka's demurrer, but failed to file a response to it. At no time during the pendency of the Goka case did respondent advise Parvanian that Dr. Goka filed a motion a demurrer or that respondent failed to file a response to the demurrer.
- 40) On May 15, 2003, respondent filed a request for dismissal with prejudice in the Goka case. At no time did respondent advise Parvanian that he filed a request for dismissal in the Goka case.
- 41) On May 19, 2003, the court issued an order granting Dr. Goka's demurrer without leave to amend. At no time did respondent advise Parvanian that Dr. Goka's demurrer had been granted.
- 42) At no time did respondent refund any portion of the \$4,900 paid by Parvanian.

Conclusion of Law - Count Seven - Rules of Professional Conduct, rule 3-110(A) [Failure to Perform with Competence]

- 43) By filing lawsuit after the statute of limitations had already expired and having no argument to toll the statute and by failing to file a response to Dr. Goka's demurrer, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

Conclusion of Law Count Eight - Business and Professions Code, section 6068(m) [Failure to Inform Client of Significant Development]

- 44) By failing to inform Parvanian at the time of hire that his medical malpractice claim against Dr. Goka was barred by the statute of limitations, by failing to inform Parvanian that Dr. Goka filed a motion for demurrer in the Goka case, by failing to inform Parvanian that he did not file a response to Dr. Goka's demurrer, by failing to inform Parvanian that he filed a request for dismissal in the Goka case and by failing to inform Parvanian that the court granted Dr. Goka's demurrer, respondent failed to inform a client of significant developments in a matter in which respondent had agreed to provide legal services.

Facts and Conclusion of Law - Count Twelve - Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

45) To date, respondent has failed to provide a refund to Parvanian for unearned fees in the Watson case, the Wiens matter and the Goka case.

46) By not refunding unearned fees to Parvanian in the Watson case, the Wiens matter and the Goka case to Parvanian, respondent failed to promptly refund unearned fees.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was May 22, 2009.

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>
05-O-04676	Nine	RPC 4-200(A) [Unconscionable Fee]
05-O-04676	Ten	Bus. and Prof. Code, section 6106 [Moral Turpitude]
05-O-04676	Eleven	RPC 4-100(B)(3) [Failure to Account for Client Funds]

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of May 22, 2009, the prosecution costs in this matter are approximately \$3,845.82. 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 DISCIPLINE.

Standards Pertaining to Sanctions for Professional Misconduct, standards 2.7, 2.4(b) and 1.7; *In re Silverton* (2005) 36 Cal.4th 81; *In the Matter of Yagman* (Review Dept. 1997) 3 State Bar Ct. Rptr.788

FINANCIAL CONDITIONS, RESTITUTION.

As specifically set forth herein, respondent must make restitution to Eddie Parvanian or the Client Security Fund if it has paid, in the principal amount of \$ 25,000.00 plus interest at the rate of 10% per annum accruing from May 1, 2005 and furnish satisfactory evidence of restitution to the Office of Probation. Respondent must pay installment payments as follows:

<u>Payee/CSF (as applicable)</u>	<u>Minimum Payment Amount</u>	<u>Payment Date</u>
Eddie Parvanian	\$20,000.00	On or before June 9, 2009

Eddie Parvanian	\$ 5,000.00	On or before September 9, 2009
Eddie Parvanian	Entire amount of interest accrued on principal amount of \$25,000.00 from May 1, 2005	On or before January 9, 2010

Respondent shall include, in each quarterly report required herein, satisfactory evidence of all restitution payments made by him or her during that reporting period.

Respondent hereby waives any objection to payment by the State Bar Client Security Fund upon a claim for the principal amount of restitution set forth herein.

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.

In the Matter of
WILLIAM L. FEARNside

Case number(s):
05-O-04676-PEM

A Member of the State Bar

Law Office Management Conditions



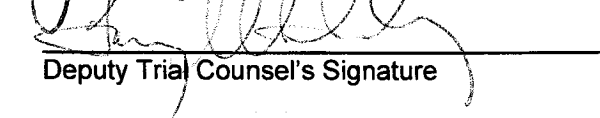
- a. ☒ Within **60** days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone 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 **20** 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.

(Do not write above this line.)

In the Matter of WILLIAM L. FEARNSIDE	Case number(s): 05-O-04676-PEM
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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>6/1/09</u> Date	 Respondent's Signature	<u>William L. Fearnside</u> Print Name
<u>June 2, 2009</u> Date	 Respondent's Counsel Signature	<u>Jonathan I. Arons</u> Print Name
<u>6/2/2009</u> Date	 Deputy Trial Counsel's Signature	<u>Tammy M. Albertsen-Murray</u> Print Name

(Do not write above this line.)

In the Matter Of WILLIAM L. FEARNSIDE	Case Number(s): 05-O-04676-PEM
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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.
1. On page 4 of the stipulation, the "X" in the box next to paragraph D.(1)(a)(i) is deleted to remove the standard 1.4(c)(ii) requirement from the stayed suspension.
 2. On page 4 of the stipulation, the "X" in the box next to paragraph D.(1)(a)(iii) is deleted to remove the restitution installment payments requirement from the stayed suspension.
 3. On page 4 of the stipulation, paragraph D.(3)(a)(iii), "Completes the restitution installment payments to Eddie Parvanian, including interest, as set forth in the Stipulation Attachment at pages 12-13" is deleted, and in its place is inserted "Pays restitution to Eddie Parvanian, including interest, as set forth in the Stipulation Attachment at pages 12-13."
 4. On page 7 of the stipulation, above "**Facts and Conclusions of Law**" is inserted "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."
 5. Beginning on page 12 of the stipulation, and continuing to page 13, in the section entitled "FINANCIAL CONDITIONS, RESTITUTION" the balance of the text beginning with "Respondent must pay installment payments as follows:" is deleted, and in its place is inserted "Respondent hereby waives any objection to payment by the State Bar Client Security Fund upon a claim for the principal amount of restitution set forth herein. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d)."

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.)**

June 18, 2009

Date

Judge of the State Bar Court

Lucy Armentariz

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 San Francisco, on June 18, 2009, 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 San Francisco, California, addressed as follows:

**JONATHAN IRWIN ARONS
LAW OFC JONATHAN I ARONS
221 MAIN ST STE 740
SAN FRANCISCO, CA 94105**

- ☐ 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:

TAMMY ALBERTSEN-MURRAY, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 18, 2009.



Bernadette C.O. Molina
Case Administrator
State Bar Court