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CONFIDENTIAL
ORIGINAL

**State Bar Court of California
Hearing Department**

PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES

Counsel For The State Bar CHARLES A. MURRAY Deputy Trial Counsel 1149 South Hill Street Los Angeles, California 90015 Bar # 146069 Tel: (213) 765-1236	Case Number (s) 06-O-12467	(for Court's use) LODGED MAY - 2 2008 <i>Yic</i>
Counsel For Respondent CHARLENE DRYER Post Office Box 2783 Newport Beach, California 92659 Bar # 110523 Tel: (949) 650-8479	Submitted to: Program Judge	FILED FEB - 2 2010 <i>Yic</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES PUBLIC MATTER
In the Matter Of: JAMES JOSEPH BRUSTMAN Bar # 47523 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS AND CONCLUSIONS OF LAW <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 January 7, 1971.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of ___ pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts." -See Attachment
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law". -See Attachment
- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

(Stipulation form approved by SBC Executive Committee 9/18/2002. Rev. 12/16/2004; 12/13/2006.)

Program

(Printed: 053107)



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)] (See Attachment - Page 7.)
- (a) State Bar Court case # of prior case 96-0-2722
- (b) Date prior discipline effective April 9, 1998
- (c) Rules of Professional Conduct/ State Bar Act violations: RPC 3-110(A); 4-100(B)(4)
SBA 6068(m)
- (d) Degree of prior discipline Public Reprimand
- (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.
- (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.

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- (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. *See pg. 7.*
- (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. *See pg. 7.*
- (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:

ATTACHMENT TO
ADP STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF: **JAMES JOSEPH BRUSTMAN** (Respondent"), #47523

CASE NUMBERS **06-O-12467**

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was June 1, 2007.

STIPULATION AS TO FACTS AND CONCLUSIONS OF LAW:

Respondent admits that the following facts are true and that he is culpable of violations of the specified statues and/or Rules of Professional Conduct, or has otherwise committed acts of misconduct warranting discipline:

GENERAL BACKGROUND

1. At all times relevant herein, Respondent maintained a client trust account at Bank of the West, designated account number 658-017066 (the "client trust account").

FACTS

2. On August 21, 2002, Iris Duenas ("Ms. Duenas"), also known as Blanca Duenas, retained Respondent on a contingency fee basis to represent her in a personal injury matter against Bally Total Fitness Corporation ("Bally Fitness") for a slip-and-fall accident. There is an undated retainer agreement signed by Ms. Duenas.

3. On November 14, 2002, Respondent signed a medical lien in favor of Ace Chiropractic Clinic ("Ace Clinic"). Ace Clinic was one of the medical providers that treated Ms. Duenas as a result of her slip-and-fall injury at Bally Fitness.

4. On December 9, 2002, Respondent signed a medical lien in favor of Central Diagnostic Imaging Network ("Central Diagnostic"). Central Diagnostic was one of the medical providers that treated Ms. Duenas as a result of her slip-and-fall injury at Bally Fitness.

5. In October 2004, Ms. Duenas' personal injury matter settled for the total sum of \$12,000.00.

6. On October 12, 2004, Ms. Duenas signed the settlement and release regarding her personal injury matter against Bally Fitness.

7. On October 12, 2004, Respondent received a settlement draft in the amount of \$6,000.00 from Cambridge Integrated Services Group, Inc., as partial payment for the personal injury matter against Bally Fitness. The check was made payable to James Brustman Law Offices and Blanca Duenas.

8. On October 26, 2004, Respondent received another settlement draft in the amount of \$6,000.00 from Cambridge Integrated Services Group, Inc., as full and final payment for the personal injury matter against Bally Fitness. The check was made payable to James Brustman Law Offices and Blanca Duenas.

9. On November 4, 2004, Respondent deposited the two settlement drafts into his client trust account.

10. As of November 4, 2004, Respondent had received \$12,000.00 in settlement funds on behalf of Ms. Duenas. Respondent's disbursement sheet, which he provided to the State Bar on or about August 9, 2006, indicated that Respondent was entitled to \$4,172.50 for attorney fees and costs. Thus, Respondent was required to maintain at least \$7,827.50 in his client trust account on behalf of Ms. Duenas and her medical providers.

11. However, on January 31, 2005, the balance in Respondent's client trust account fell to \$6,823.09, which was below the amount Respondent was required to maintain on behalf of Ms. Duenas. At no time on or prior to January 31, 2005 did Respondent disburse any settlement funds to Ms. Duenas, any of Ms. Duenas' medical providers, or anyone else on behalf of Ms. Duenas.

12. On February 28, 2005, the balance in Respondent's client trust account fell to \$4,602.98, which was below the amount Respondent was required to maintain on behalf of Ms. Duenas. At no time on or prior to February 28, 2005 did Respondent disburse any settlement funds to Ms. Duenas, any of Ms. Duenas' medical providers, or anyone else on behalf of Ms. Duenas.

13. On March 21, 2005, Respondent issued a check to Ms. Duenas for \$3,000.00 from his client trust account, as payment of her portion of the settlement funds.

14. On April 28, 2005, Respondent issued a check to Central Diagnostic for \$350.00 from his client trust account on behalf of Ms. Duenas, as full and final payment of Central Diagnostic's medical lien.

15. After the March 31, 2005 payment to Ms. Duenas and the April 28, 2005 payment to Central Diagnostic, Respondent was required to maintain at least \$4,477.50 in settlement funds in his client trust account on behalf of Ms. Duenas.

16. However, on June 30, 2005, before Respondent made any additional disbursements on behalf of Ms. Duenas, the balance in Respondent's client trust account dropped to \$2,702.89, which was below the \$4,477.50 amount Respondent was required to maintain on behalf of Ms. Duenas.

17. On February 13, 2006, Ace Clinic agreed to reduce its bill for services rendered to Ms. Duenas from \$5,250.00 to \$4,800.00, if full payment was made by mid February 2006.

18. On February 14, 2006, Respondent issued a check to Ace Clinic for \$4,200.00 from his client trust account on behalf of Ms. Duenas, as payment of Ace Clinic's medical lien. This was \$600.00 less than the amount that Respondent agreed to pay Ace Clinic. Consequently, Ace Clinic did not cash the check until Respondent paid the full balance, which he finally did, on August 21, 2006.

19. At the time that Respondent issued the check to Ace Clinic for \$4,200.00 on behalf of Ms. Duenas, there was only, at most, \$2,702.89 left in his client trust account on behalf of Ms. Duenas. When Respondent issued the check to Ace Clinic, he issued the check against only at most \$2,702.89 belonging to Ms. Duenas, and the balance of the check amount, at least \$1,497.11, was issued against funds in Respondent's client trust account belonging to other clients. When the check to Ace Clinic cleared in August 2006, it cleared against at most \$2,702.89 belonging to Ms. Duenas and at least \$1,497.11 belonging to other clients.

20. On August 21, 2006, Respondent issued a check to Ace Clinic for \$600.00 from his client trust account on behalf of Ms. Duenas, as full and final payment of Ace Clinic's medical lien. At the time that he issued the check to Ace Clinic, there was no money remaining in his client trust account on behalf of Ms. Duenas. Therefore, the check to Ace Clinic was issued against and cleared against funds belonging to other clients maintained in Respondent's client trust account.

21. Respondent dishonestly, or with gross negligence, misappropriated funds he held on behalf of Ms. Duenas.

22. Respondent dishonestly, or with gross negligence, misappropriated funds belonging to other clients maintained in his client trust account.

23. Respondent failed to pay Ms. Duenas her portion of the settlement funds from November 4, 2004 until March 21, 2005, a period of more than four months from the time he deposited the settlement funds into his client trust account.

24. Respondent failed to satisfy the medical lien owed to Central Diagnostic from November 4, 2004 until April 28, 2005, a period of more than five months from the time he deposited the settlement funds into his client trust account. At no time during this period did Respondent take any action to either pay off or negotiate the lien.

25. Respondent failed to satisfy any portion of the medical lien owed to Ace Clinic from November 4, 2004 until February 14, 2006, a period of more than fifteen (15) months from the time he deposited the settlement funds into his client trust account. At no time during this period did Respondent take any action to either pay off or negotiate the lien until February 13, 2006.

26. On March 1, 2006, Ace Clinic wrote a letter to Ms. Duenas requesting that she pay the outstanding balance of \$600.00. In its letter, Ace Clinic stated that if the outstanding balance was not paid by March 8, 2006, it would submit the unpaid medical bill to collections, as well as initiate legal proceedings against Ms. Duenas. A copy of the letter was sent to Respondent to his office at 1321 S. Main Street, Santa Ana, CA 92707. The letter was properly mailed to Respondent via the U.S. Postal Service, first class postage prepaid, in a sealed envelope properly addressed to his office address. The letter was not returned to Ace Clinic as undeliverable or for any other reason by the U.S. Postal Service. Respondent received the March 1, 2006 letter, but failed to pay the balance owed to Ace Clinic until August 21, 2006.

27. Respondent failed to completely satisfy the medical lien owed to Ace Clinic until August 21, 2006, more than twenty-one (21) months after he deposited the settlement funds into his client trust account.

CONCLUSIONS OF LAW

28. By failing to maintain at least \$7,827.50 in his client trust account on behalf of Ms. Duenas from November 4, 2004 until March 21, 2005; by failing to maintain at least \$4,827.50 in his client trust account on behalf of Ms. Duenas from March 21, 2005 until April 28, 2005; by failing to maintain at least \$4,477.50 in his client trust account on behalf of Ms. Duenas from April 28, 2005 until February 14, 2006; and, by satisfying Ace Clinic's medical lien in part from funds belonging to other clients maintained in his client trust account; Respondent failed to maintain client funds in his client trust account and misappropriated client funds, in wilful violation of the Rules of Professional Conduct, rule 4-100(A).

29. By misappropriating funds he held on behalf of Ms. Duenas and other clients maintained in his client trust account, Respondent committed an act or acts involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code section 6106.

30. By delaying payment to his own client for more than four months after depositing the settlement funds into his client trust account; by not satisfying the medical lien owed to Central Diagnostic for more than five months; by not satisfying any portion of the medical lien owed to Ace Clinic for more than fifteen (15) months; by failing to take steps to negotiate the medical lien owed to Ace Clinic for more than fifteen (15) months; by failing to satisfy the remaining balance of \$600.00 owed on Ace Clinic's medical lien for more than six months until August 21, 2006 despite receipt of Ace Clinic's March 1, 2006 letter; and, by allowing his client to be subject to the threat of collections and adverse legal proceedings as a result of his conduct; Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence, in wilful violation of Rules of Professional Conduct, rule 3-110(A).

AGGRAVATING CIRCUMSTANCES.

Prior Discipline:

Case No. 96-O-2722 et al. (incl. 96-O-04321 and 96-O-08213): Effective April 9, 1998.
Violations: Rules of Professional Conduct, rules 3-110(A) [failure to perform], 4-100(B)(4) [failure to promptly pay out] and Business and Professions Code section 6068(m) [failure to communicate]. Discipline: Public reproof for one (1) year with duties, including MPRE, Ethics School, Restitution, and costs.

Multiple/Pattern of Misconduct:

Respondent's multiple trust fund and failure to perform violations evidences multiple acts of wrongdoing.

MITIGATING CIRCUMSTANCES.

Emotional/Physical Difficulties/Family Problems:

Respondent has had to care for his ill wife. Moreover, after being diagnosed with liver cancer in February 2006, he was subjected to numerous medical tests and procedures and was confined to home during Mid June and mid August 2006.

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In the Matter of JAMES JOSEPH BRUSTMAN Member #47523	Case number(s): 06-O-12467
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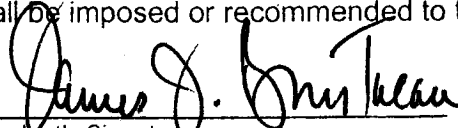
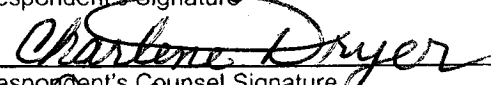
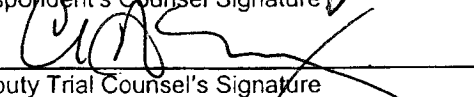
SIGNATURE OF THE PARTIES

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 Facts and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

Date <u>7-17-07</u>	 Respondent's Signature _____ JAMES J. BRUSTMAN Print Name
Date <u>7/17/07</u>	 Respondent's Counsel Signature _____ CHARLENE DRYER Print Name
Date <u>7/17/07</u>	 Deputy Trial Counsel's Signature _____ CHARLES A. MURRAY Print Name

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In the Matter Of JAMES JOSEPH BRUSTMAN Member #47523	Case Number(s): 06-O-12467
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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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All court dates in the Hearing Department 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

Date



Judge of the State Bar Court

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 May 2, 2008, I deposited a true copy of the following document(s):

CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS; STIPULATION RE FACTS AND CONCLUSIONS OF LAW AND CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S ALTERNATIVE DISCIPLINE PROGRAM

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

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

**CHARLENE DRYER
PO BOX 2783
NEWPORT BEACH, CA 92659**

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

MONIQUE T. MILLER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **May 2, 2008**.



Tammy R. Cleaver
Case Administrator
State Bar Court

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 February 2, 2010, I deposited a true copy of the following document(s):

DECISION AND ORDER SEALING CERTAIN DOCUMENTS;

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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:

**CHARLENE DRYER
PO BOX 2783
NEWPORT BEACH, CA 92659**

**JAMES JOSEPH BRUSTMAN
714 S HARBOR BLVD
ANAHEIM, CA 92805 - 4528**

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

MONIQUE MILLER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 2, 2010.



Tammy Cleaver
Case Administrator
State Bar Court